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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 190, 194, and 195

[Docket No. PHMSA-2018-0047]

RIN 2137-AF37

Pipeline Safety: Regulatory Reform for Hazardous Liquid Pipelines

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: PHMSA is soliciting public comment on proposed amendments to the Federal Pipeline Safety Regulations for the safety of hazardous liquid pipelines that would revise the requirements for facility response plans, revise the definition for accidents, and consider repealing, replacing, or modifying other specific regulations. The intent of these changes is to reduce regulatory burdens and improve regulatory clarity without compromising safety and environmental protection.

DATES: Comments on this notice are due by [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: Submit comments, identified by Docket No. PHMSA-2018-0047, using any of the following methods:

- Federal eRulemaking Portal: https://www.regulations.gov. Follow the online instructions for submitting comments.
- Fax: 1-202-493-2251.
- Mail: U.S. DOT Docket Management System, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.
- Hand-deliver/courier: Available between 9a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this proposed rule. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA has received your comments by mail, include a self-addressed stamped postcard.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to http://www.regulations.gov,as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at https://www.transportation.gov/privacy.

Confidential business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 CFR 190.343,

you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) mark each page of the original document submission containing CBI as "Confidential"; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice of proposed rulemaking (NPRM). Submissions containing CBI should be sent to Sayler Palabrica at sayler.palabrica@dot.gov or 1200 New Jersey Ave SE, E24-447, Washington, DC 20590. Any commentary that PHMSA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Chris Hoidal, Senior Technical Advisor, by telephone at 303-807-8833 or by email at chris.hoidal@dot.gov.

For general information, contact Sayler Palabrica, Transportation Specialist, by telephone at 202-366-0559 or by email at sayler.palabrica@dot.gov.

SUPPLEMENTARY INFORMATION:

I. EXECUTIVE SUMMARY

A. Purpose of This Rulemaking Action

PHMSA is proposing to amend the Federal Pipeline Safety Regulations at 49 CFR parts 190, 194, and 195 to reduce the regulatory burden on pipeline systems transporting hazardous liquids. The proposed amendments in this rulemaking include regulatory relief actions identified by internal agency review, petitions for rulemaking, and public comments on DOT's regulatory reform and infrastructure notifications titled, "Transportation Infrastructure: Notice of Review of Policy, Guidance, and Regulation" (82 FR 26734; June 8, 2017), and "Notification of Regulatory Review" (82 FR 45750; Oct. 2, 2017). PHMSA is requesting comment on the proposed amendments.

B. Summary of the Proposed Amendments

PHMSA is proposing to repeal, replace, or revise sections in parts 190, 194, and 195 to reduce regulatory burdens. Part 190 specifies procedures during inspections and investigations, part 194 contains the requirements for preparing and submitting oil spill response plans, and part 195 prescribes the safety and reporting requirements for pipelines transporting hazardous liquids or carbon dioxide. In part 190, PHMSA is proposing to clarify the requirements for producing records during an inspection or investigation and reduce the burden required to submit confidential commercial information under most circumstances. In part 194, PHMSA is proposing amendments that would streamline the oil spill response plan requirements and clarify or eliminate

requirements that may be confusing or redundant. In part 195, PHMSA is proposing amendments that would relieve accident reporting burdens, allow remote monitoring of rectifier stations, and clarify integrity management (IM) guidance.

C. Costs and Benefits

PHMSA projects that, if promulgated, the amendments in this proposed rule would result in estimated annualized net cost savings of $273,242 for regulated entities based on a 7 percent discount rate. PHMSA has determined that the proposed changes would not increase risks to public safety or the environment.

In accordance with 49 U.S.C. 60102, Executive Order (E.O.) 12866, and DOT policy, PHMSA has prepared an initial assessment of the costs and benefits of these proposed changes as well as reasonable alternatives. PHMSA has released the preliminary regulatory impact analysis (RIA) concurrent with this NPRM for public review and comment, and it is available in the docket.

II. Background

In response to E.O. 13771, "Reducing Regulation and Controlling Regulatory Costs," E.O. 13783, "Promoting Energy Independence and Economic Growth," and E.O. 13777, "Enforcing the Regulatory Reform Agenda," DOT issued two notices soliciting regulatory reform ideas from the public. The first notification (82 FR 26734; June 8, 2017) requested public comment on existing regulations that may be obstacles to transportation infrastructure projects. DOT received more than 200 comments in the transportation infrastructure docket, including six comments that are relevant to the

Federal Pipeline Safety Regulations.[1] The second notification (82 FR 45750; Oct. 2, 2017) requested comment on existing rules and other agency actions that may be eligible for repeal, replacement, suspension, or modification without compromising safety. DOT asked the public to identify agency actions that eliminate jobs or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; could be revised to use performance standards in lieu of design standards; or potentially unnecessarily encumber energy production. After a 30-day comment period, DOT re-opened the comment period until December 1, 2017 (82 FR 51178; Nov. 3, 2017). Of the nearly 3,000 public comments received, approximately 30 were related to the Federal Pipeline Safety Regulations.[2]

To support DOT's regulatory reform efforts, PHMSA's Office of Pipeline Safety (OPS) reviewed, considered, and identified existing regulations that could be improved, revised, repealed, or streamlined. OPS also considered the public comments submitted in response to DOT's June 8, 2017 notice soliciting comments about transportation infrastructure, DOT's October 2, 2017 public notice soliciting comments on regulatory reform, and petitions for rulemakings. These amendments to PHMSA regulations are being proposed based on the input received in response to those notifications.

III. Request for Input

PHMSA is seeking public comments on the regulatory reform actions proposed in this NPRM. PHMSA will consider all relevant and substantive comments but encourages

[1] Docket No. DOT-OST-2017-0057.
[2] Docket No. DOT-OST-2017-0069.

interested parties to submit comments that: (1) identify the proposed amendments being commented on and the appropriate section numbers; (2) provide justification for their support or opposition to the proposed amendments, especially data on safety risks and cost burdens; and (3) provide specific alternatives if appropriate.

IV. Proposed Amendments

A. Part 190 Pipeline Safety Enforcement and Regulatory Procedures

The Pipeline Safety Laws (49 U.S.C. 60101 *et seq.*) require pipeline operators to maintain records, make reports, and provide certain information to PHMSA upon request. PHMSA is proposing to amend its regulations under part 190 to clarify the requirements for producing records during an agency inspection or investigation in a way that recognizes technological innovation. The proposed changes would clarify that new technology is permitted while ensuring that PHMSA can effectively enforce the Federal Pipeline Safety Regulations.

Section 190.203 Inspections and investigations.

The Pipeline Safety Laws require operators to make records, reports and information available to PHMSA upon request and provide the information that is required in order to decide whether or not an operator is in compliance.[3] PHMSA is proposing to clarify that operators may submit records electronically, provided that the method used to submit information allows PHMSA to download and print non-redacted copies of records in their original format (the file format used by the application that created the electronic document) and does not impose limitations that impede PHMSA's ability to enforce the Pipeline Safety Laws. PHMSA recognizes that record production

[3] 49 U.S.C. 60117(b).

technology will continue to evolve and intends to define document production standards in this proposed rule in a way does not create a barrier to innovation in record production technology. Thus, PHMSA's proposed change would set consistent minimum standards for providing records to PHMSA and give operators the choice to select the best method to deliver the information that PHMSA needs to enforce the Pipeline Safety Laws. This change does not have direct safety effects but will improve the efficiency of inspections and investigations.

PHMSA encourages the use of technology that makes sending and receiving records more convenient; however, that goal is undermined by a lack of clear expectations for the quality and usability of information submitted to the agency. This lack of clear expectations leads to unnecessary delays and burdens on both operators and inspectors when PHMSA requests operators manually re-submit records that were provided in an unusable format.

Historically, pipeline operators provided PHMSA with paper copies of records during the agency's routine inspections and accident investigations. As technology has evolved, operators have provided electronic and hard copies of company records to PHMSA. Recently, some operators have requested that PHMSA access and review documents related to incidents or investigations through an operator-controlled electronic record delivery system (often referred to as a "portal").

PHMSA recognizes that electronic systems present an opportunity to deliver operator records to PHMSA in a cost-effective manner. However, some electronic systems alter the usability of documents in a way that limits PHMSA's ability to carry out its statutory responsibilities under the Pipeline Safety Laws. For example, some

portals are "view only" and do not allow PHMSA the ability to download, print, or search important operator records; many of these documents must be analyzed and compared with other documents, and cannot be adequately reviewed by viewing on a computer screen one page at a time. Other features that have impeded PHMSA's review of documents include automatic watermarking, intrusive monitoring systems, and systems that convert documents to un-searchable PDFs.

In order to maintain consistency between operator-submitted paper and electronic records, PHMSA proposes to place certain minimum standards on the capabilities of an operator's record production and delivery systems. Specifically, PHMSA proposes to require that, for any records that an operator chooses to submit to PHMSA using an electronic record delivery system or similar technology, the electronic record delivery system or technology must: (1) allow PHMSA to download and print all records on the portal from any U.S.-based internet access point without redacting or altering the document (e.g., watermarking, date and time-stamping with username/access date information); (2) not remove or restrict document functionality that is available to the operator for each document, meaning that if the original format of a document allows for the ability to magnify a document while maintaining legibility; search a record for text; or search for specific records by name, date, or file type, then those same capabilities must be available to PHMSA personnel; and (3) provide PHMSA with a point of contact who is responsible for addressing reported problems with the system or any record displayed on the system. If the point of contact is not a site administrator, then PHMSA would expect the point of contact to have direct access to a site administrator responsible for fixing problems as expeditiously as possible.

For any electronic record delivery system that PHMSA accesses for the purposes of enforcing the Pipeline Safety Laws, operators must: (1) disable the use of activation codes that must be entered to begin any individual session; (2) disable any unnecessary internet connectivity requirements to view downloaded documents; (3) disable any document tracking features; (4) ensure that any "time-out" feature be set to a reasonable amount of time, but no shorter than one hour; and (5) not impose any pre-access conditions (e.g., through log-in agreements or notifications) that hinder PHMSA's ability to use records displayed on the portal. If PHMSA determines that an operator's electronic record delivery system would impede or otherwise prevent PHMSA's efficient review of records in an inspection or investigation, or if the system is otherwise in conflict with PHMSA regulations, PHMSA may order an operator to deliver records via an alternative method or in an alternative format.

The proposed rule gives operators the choice to select the best method to deliver information to PHMSA and does not require operators to modify records to meet these requirements. PHMSA proposes to require operators submit electronic records in their original format unless PHMSA allows an alternative format. Operators must not alter documents in a way that impedes PHMSA's ability to effectively or efficiently review the documents. For example, if a particular report is in PDF format, PHMSA would not expect an operator to convert it to a word document before submitting it to PHMSA through an electronic system. On the other hand, an electronic system that converts all submitted documents, including searchable spreadsheets or word processor documents, to PDF form would not be acceptable.

Clear requirements for electronic record delivery systems will reduce delays for both operators and PHMSA. The Pipeline Safety Laws require operators to make records, reports, and information available upon request in order to assist PHMSA's determination regarding whether an operator is in compliance with the Pipeline Safety Laws (49 U.S.C. 60117(b)). The proposed rule ensures that operators do not spend time creating systems that are unusable by PHMSA and allows the agency to efficiently access and use electronic records.

Section 190.343 Information made available to the public and request for protection of confidential commercial information.

Section 190.343 establishes the procedures for operators to request confidential treatment of commercial information they submit to PHMSA, including a requirement for operators to provide PHMSA with a redacted copy of the records being submitted and an explanation as to why the information is confidential commercial information. PHMSA is proposing to revise these requirements to reduce the burden associated with redacting documents containing confidential information. This change has no direct safety effects but may improve the efficiency of inspections and investigations.

In response to DOT's notification of regulatory reform (82 FR 45750; Oct. 2, 2017), the American Petroleum Institute (API) and the Association of Oil Pipelines (AOPL) expressed concerns about the need to provide a copy of redacted records under § 190.343(a), especially records that are requested during inspections and investigations. API and AOPL stated, "the process of redacting information from voluminous documents is very burdensome and costly, and if a Freedom of Information Act (FOIA) request is

not made for the documents, then dedicating significant resources to such an effort is unwarranted." Pipeline operators have expressed similar concerns to PHMSA staff.

PHMSA understands this concern and also has observed that redaction requirements can lead to delays during investigations. For these reasons, PHMSA proposes to provide operators the option, but not the obligation, to submit a redacted copy of records containing confidential commercial information submitted for purposes other than rulemaking or special permit proceedings, such as in response to a PHMSA inspection or investigation. PHMSA proposes to continue to require operators to submit a redacted copy of records submitted in rulemaking proceedings and in applications for special permits and renewals, since those documents must be placed in a public docket. The proposed revision results in cost savings in situations in which it may be burdensome and costly for operators to redact records prior to submission. In other situations, operators may prefer to provide PHMSA with a second copy that has confidential commercial information redacted.

In addition to the changes to redaction requirements, PHMSA also proposes to clarify what is required to assert that information is confidential commercial information. Simply marking records "confidential" under a general claim of confidentiality is not sufficient for the purposes of claiming confidential commercial information. PHMSA proposes to require operators provide a specific explanation of why the information is confidential commercial information. The proposed rule also clarifies § 190.343 by eliminating superfluous language in paragraph (b) that indicates under what conditions PHMSA will treat information as confidential.

B. Part 194 Response Plans for Onshore Oil Pipelines

PHMSA promulgated part 194 in response to the mandates in the Oil Pollution Act of 1990 (OPA 90).[4] OPA 90 requires any operator of a ship or facility, including pipeline facilities, that could cause substantial environmental harm by discharging oil into or on the navigable waters or adjoining shorelines of the United States, to prepare and submit a facility response plan (FRP) for a worst-case oil discharge. Part 194 requires operators of onshore oil pipeline facilities to prepare an FRP and establishes the minimum requirements for what the operators must include in their FRPs. In all FRPs, the operator must describe a "worst-case" scenario as well as the appropriate response to that discharge, including details regarding the equipment and personnel that will be made available during the specified timeframe following the discharge to appropriately contain and clean up the spill. Part 194 also requires operators to run drills and exercises based on their FRPs to prepare for an acutal release.

PHMSA is proposing several changes to part 194 to streamline how operators of onshore oil pipelines must plan, prepare, and submit FRPs as required by OPA 90. The proposed changes are intended to improve the clarity of the requirements and applicability of part 194, codify current policy, ensure consistency with other federal requirements and terminology, and reduce regulatory burdens without compromising safety. Notably, this NPRM would clarify the applicability of part 194 by removing a list of exemptions that are incorrectly defined as "exceptions" in § 194.101. Section 194.101(b)(1) lists "exceptions" to the requirements of part 194. However, these

[4] The Oil Pollution Act of 1990 (OPA 90) (33 U.S.C. 1321) amended the Federal Water Pollution Control Act (FWPCA).

"exceptions" are not applicable if the pipeline facility could cause "substantial" or "significant and substantial harm" to navigable waters or adjoining shorelines. Since part 194 only applies to pipeline facilities that could affect navigable waterways or adjoining shorelines, these are not true exceptions. Partially removing the "exceptions" as currently written would clarify the applicability of part 194 in a manner consistent with OPA 90.

PHMSA is proposing to move the "exception" currently listed in § 194.101(b)(2)(ii) to § 194.3(b). This exemption applies to pipelines 6 5/8 inches or less in diameter, ten miles or less in length, and where the operator determines that it is unlikely that the worst-case discharge (WCD) from any point on the line section would adversely affect, within 4 hours after the initiation of the discharge, any navigable waters, public drinking water intake, or environmentally sensitive areas. Due to the lower risk presented by these low-capacity pipelines that are removed from protected resources, PHMSA wishes to explicitly recognize the possibility that these pipelines may not require a plan.

Additionally, PHMSA is proposing to remove the terms "substantial harm" and "significant and substantial harm" from the regulations and remove § 194.103 in its entirety. Currently, part 194 requires an operator to make a distinction between the types of potential harm an oil spill could cause, include a statement in its FRP if certain conditions are met, and submit a plan accordingly. OPA 90 requires submission of plans for facilities that could cause "substantial harm" or "significant and substantial harm," but does not expressly require approval of plans for "substantial harm" facilities. PHMSA has historically reviewed plans for both types of facilities for accuracy and completeness, communicated those findings to the operators, and required correction

where needed. Furthermore, the requirements in part 194 for pipeline facilities that could cause "substantial harm" are the same as the requirements for pipeline facilities that could cause "significant and substantial harm." Distinguishing between the two creates unnecessary categories and some degree of burden to operators and PHMSA. PHMSA proposes to remove these terms, clarify the applicability of part 194 in § 192.3, and thus eliminate a minor regulatory burden associated with justifying the appropriate determination. This change would be consistent with the authorizing legislation, OPA 90, and does not compromise safety since the distinction between "substantial harm" and "significant and substantial harm" has no effect on the plan requirements.

PHMSA is also proposing additional provisions to make it easier for an operator to prepare and submit response plans. These changes would include: (1) allowing operators to use spill modeling for estimating WCDs; (2) requiring operators to submit plans electronically; (3) allowing operators to submit DOT annexes to existing response plans prepared for state regulators; and (4) clarifying that an operator must submit plans before putting a pipeline facility in service rather than prior to beginning construction. PHMSA is also proposing technical and editorial changes for consistency and clarity. The following is a section by section discussion of the proposed changes.

Section 194.3 Applicability.

Section 194.3 defines the applicability of part 194. Part 194 applies to onshore oil pipeline facilities that, because of its location, the operator determines that oil discharged from any point on the pipeline facility could reasonably be expected to adversely affect any navigable waters in the U.S. or adjoining shorelines. PHMSA is proposing to revise this section to clarify that part 194 applies to pipeline facilities that could affect the navigable waters of the U.S. or adjoining shorelines within 12 hours, with an exception for smaller-diameter or shorter pipelines that cannot adversely affect navigable waters within 4 hours.

These changes would preserve the current exceptions in § 194.101(b) for: (1) pipeline facilities where a discharge would not affect water within 12 hours of the release, and (2) pipeline facilities $6\frac{5}{8}$ inches or less in diameter and 10 miles or less in length where a discharge would not be able to affect water within 4 hours of the discharge. The current exception in § 194.101(b)(1) is not explicitly retained because that exception only applies if the pipeline is not in proximity to navigable waters. Since part 194 does not apply to pipelines that cannot affect navigable waters, the exception in § 194.101(b)(1) is meaningless. This change will, therefore, not have an effect on the number of operators subject to the part 194 requirements since all FRPs currently submitted to PHMSA are for pipelines that are greater than $6\frac{5}{8}$ in diameter and could affect navigable waters within 12 hours of a release or are less than $6\frac{5}{8}$ in diameter and can affect navigable waters within 4 hours of a release. The proposed changes will provide increased clarity regarding the applicability of part 194 without affecting safety.

These proposed amendments will also clarify that part 194 is not applicable to operators of onshore oil pipeline facilities that are $6\frac{5}{8}$ inches or less in diameter and *greater* than 10 miles in length or greater than $6\frac{5}{8}$ inches in diameter and 10 miles or *less* in length that do not affect navigable waters or adjoining shorelines. The existing exceptions omit the possible combinations of small diameter pipelines longer than 10 miles in length and larger diameter pipelines 10 miles or less in length. This incorrectly implies that operators of those onshore oil pipelines must submit response plans even if they would not affect navigable waters or adjoining shorelines. Given that OPA applies to facilities that could affect navigable waters and adjoining shorelines, an FRP is not required for such facilities.

Section 194.5 Definitions.

Section 194.5 provides definitions specific to part 194. PHMSA is proposing to add, revise, and remove several definitions from this section to ensure the terms used throughout part 194 are clear and accurate. PHMSA also believes that amending certain definitions in part 194 will help improve the readability of the part.

Area Contingency Plan (ACP) and National Contingency Plan (NCP)

PHMSA proposes to add definitions for National Contingency Plan (NCP)[5] and Area Contingency Plan (ACP) in part 194. The proposed rule defines the NCP as the National Oil and Hazardous Substances Pollution Contingency Plan codified in 40 CFR part 300. The NCP provides the national-level organizational structure and procedures for preparing for and responding to oil spills and other hazardous releases. PHMSA also

[5] 40 CFR part 300, National Contingency Plan, NCP.

proposes to define ACP as a regional response plan prepared in accordance with OPA 90 and the NCP.

Various environmental laws and regulations, primarily the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)[6], OPA 90, and the NCP establish tiered classifications of response plans to ensure that the government and other entities have adequate protocols and resources in place to respond to an oil spill regardless of the scope of the spill. The broadest response plan is the nationwide NCP, which was created by CERCLA and is codified by the Environmental Protection Agency in 40 CFR part 300. ACPs are regional response plans required by OPA 90 which cover smaller geographical areas defined in the NCP. The most detailed plans are facility-specific response plans, which must be consistent with the applicable ACPs and the NCP. Since PHMSA uses the terms ACP and NCP throughout part 194, the regulations would benefit from spelling out and defining these terms.

Worst-case Discharge

Part 194 requires an operator to determine a "worst-case discharge" (WCD) volume to account for in its FRP. The WCD is the largest of three elements: 1) largest discharge from a line section calculated by adding the possible amount released following a pipeline failure before a pipeline is shutdown with the line section drain down after shutdown; 2) volume of largest breakout tank or battery of tanks with credits for preventative measures; or 3) largest historic discharge. Currently, the WCD is defined as the largest foreseeable discharge of oil, including discharge from fire or explosion, in adverse weather conditions. PHMSA is proposing to remove the phrase "in adverse

[6] Pub. L. 95-510, aka Superfund.

weather conditions" from the definition of WCD and instead require operators consider adverse weather in § 194.107 when developing the plan. Potential weather conditions have no effect on calculation for the volume of oil discharged from a pipeline facility, but is an important consideration for planning the spill response itself. This change may therefore improve the quality of FRPs.

Specified Minimum Yield Strength

PHMSA is proposing to remove the definition of "specified minimum yield strength" since the term only appears in § 194.101, which is a section PHMSA is proposing to remove. This definition, therefore, would no longer be necessary.

Tertiary Containment

PHMSA is proposing to add a definition for "tertiary containment," which appears in § 194.105 but is not defined. PHMSA's interpretation[7] of "tertiary containment" is based on the definition of secondary containment in the National Fire Protection Association (NFPA) standard NFPA 30, "Flammable and Combustible Liquids Code," which PHMSA would also incorporate by reference into part 194. PHMSA proposes to codify this term, consistent with PHMSA's previous interpretation, as a dike, berm, or other physical containment outside of the secondary containment. NFPA 30 defines secondary containment for piping systems as containment that is external to and separate from the primary piping system; a secondary containment tank is defined as one that has an inner wall and an outer wall with a means for monitoring the space between the walls for leaks.

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[7] PHMSA. Interpretation Response #PI-14-0010, 10/6/2014. https://www.phmsa.dot.gov/regulations/title49/interp/PI-14-0010.

Contract or Other PHMSA-approved Means

PHMSA is proposing to revise the definition of "contract or other approved means" to clearly define which methods for documenting the availability of adequate response resources, other than a signed contract with an oil spill removal organization (OSRO), are approved. PHMSA also proposes to clarify that documentation of active membership in cooperative or mutual aid agreements is also approved. The proposed revisions add clarity and transparency to PHMSA's review and approval of plan documentation.

Onshore Oil Pipeline Facilities

PHMSA proposes amending the definition of "onshore oil pipeline facilities" to clarify the scope of the part 194 regulations in light of potential ambiguity regarding the proper classification of pipelines under the CWA.

The CWA defines "onshore facility" as "any facility . . . of any kind located in, on, or under any land within the United States other than submerged land." 33 U.S.C. 1321(a)(10). The President has delegated to the Secretary of Transportation the authority to review and approve response plans for "transportation-related" onshore facilities, including pipelines. *See* E.O. 12777, section 2(d)(2) (Oct. 18, 1991). With respect to pipelines, the Secretary of Transportation has delegated that authority to PHMSA. *See* 49 CFR 1.97(c)(2).

The CWA defines "offshore facility" to include "any facility of any kind located in, on, or under, any of the navigable waters of the United States." *Id.* section 1321(a)(11). The President has delegated to the Secretary of the Interior the authority to review and approve response plans for "offshore facilities." *See* E.O. 12777,

section 2(d)(3). Under a Memorandum of Understanding (MOU), the Secretary of the Interior has re-delegated his authority over "transportation-related" facilities to the Secretary of Transportation to the extent those facilities are "located landward of the coast line." The MOU provides that "[t]he term 'coast line' shall be defined as in the Submerged Lands Act (43 U.S.C. 1301(c)) to mean 'the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters.'" 40 CFR part 112, appendix B. To the extent the MOU re-delegates authority over pipelines from the Secretary of the Interior to the Secretary of Transportation, the Secretary of Transportation has delegated that authority to PHMSA. *See* Memorandum from the Secretary to the Administrator, PHMSA, re: Ratification of Research and Special Programs ("RSPA") and PHMSA Approvals of Oil Spill Response Plans, and Delegation of Authority to PHMSA (Aug. 18, 2016).

Thus, PHMSA has been delegated authority to review and approve response plans for pipelines located landward of the coast line, regardless of whether those pipelines are considered under the CWA's definitions to be "onshore facilities," "offshore facilities," or both.

Beginning with the promulgation of 49 CFR part 194 in 1993, PHMSA has implemented its authority under the CWA by treating the entirety of every pipeline located landward of the coast line as an "onshore facility" for purposes of the CWA, even if some segments cross navigable waters. In other words, for the purposes of part 194, PHMSA does not consider that there are any "offshore" pipeline facilities landward of the coast line. Thus, the current version of § 194.5 defines "onshore oil pipeline facilities" to include only those facilities "in, on, or under, any land within the United

States other than submerged land," while defining "high volume area" in a way that recognizes that an "onshore oil pipeline facility" may "cross a major river or other navigable waters."

In recent litigation, a plaintiff asserted that every segment of a pipeline landward of the coast line that crosses navigable waters is an "offshore facility," and that PHMSA acted unlawfully in approving response plans covering such segments pursuant to regulations that only apply to facilities "in, on, or under, any land." The court disagreed, holding that "PHMSA's interpretation of oil pipelines that cross navigable waters as single onshore facilities is reasonable within the meaning of the CWA." *Nat'l Wildlife Fed. v. Sec'y of the Dep't of Transp.*, 374 F. Supp. 3d 634, 647 (E.D. Mich. 2019).

PHMSA continues to implement its authority under the CWA consistent with its long-held interpretation that the entirety of every pipeline located landward of the coast line is an "onshore facility" for purposes of the CWA, even if some segments cross navigable waters. To provide additional certainty, however, PHMSA proposes amending the definition of "onshore oil pipeline facilities" to make clear that the part 194 regulations cover all pipelines landward of the coast line, regardless of whether those pipelines are considered under the CWA's definitions to be "onshore facilities," "offshore facilities," or both. This change would maintain the status quo and have no impact on the substance of the response plans submitted by operators. Operators could continue to submit response plans covering a response zone made up of multiple facilities, and the requirements for those plans would remain unchanged.

Major River

PHMSA is proposing to remove the definition for "major river." This change would not affect the requirements of part 194 as the meaningful portions of the definition are repeated elsewhere. The term "major river" only appears in the definition for "high volume area," which includes the first part of the "major river" definition regarding waterways with high flow volumes and vessel traffic. The second part of the major river definition is adequately covered by the high-volume area definition and appendix B and is unnecessary. Additionally, the book that is referenced is outdated, out of print, and not readily available to the public.

Section 194.7 Operating Restrictions and Interim Operating Authorization

PHMSA is proposing technical and editorial amendments to § 194.7 to account for the removal of §§ 194.101 and 194.103.

Section 194.9 Incorporation by Reference

PHMSA is proposing to add a new section to part 194 to list standards and documents from the American Petroleum Institute (API), the National Fire Protection Association (NFPA), and the United States Coast Guard (USCG) that are incorporated by reference (IBR) in this part. While the API and NFPA documents were already listed in the existing § 194.105 for the purposes of determining the worst-case discharge of breakout tanks, part 194 lacked a specific IBR section identifying which editions of the standards were IBR into part 194. These are the same editions that are currently incorporated by reference in part 195.

API Recommended Practice 651, Cathodic Protection of Aboveground Petroleum Storage Tanks, Third Edition.

API Recommended Practice (RP) 651, Third Edition (2007) specifies procedures and practices for applying cathodic protection, a method of protecting metallic facilities from corrosion, to aboveground petroleum storage tanks. This RP contains: (1) procedures and practices for effective corrosion control on aboveground storage tank bottoms through the use of cathodic protection; (2) provisions for the application of cathodic protection to existing and new aboveground storage tanks; and (3) information and guidance for cathodic protection specific to aboveground metallic storage tanks in hydrocarbon service. Section 8 of the RP sets forth cathodic protection criteria to determine whether adequate cathodic protection has been achieved on aboveground breakout tanks. Compliance with the cathodic protection procedures and practices in API RP 651, API Std 650, and API Std 653, as applicable, allows an operator to claim a 5% prevention credit to reduce the calculated WCD of a breakout tank.

API Recommended Practice 2350, Overfill Protection for Storage Tanks in Petroleum Facilities, Third Edition.

API RP 2350 Third Edition (2005) is specifically limited to tanks associated with marketing, refining, pipeline and similar facilities containing Class I or Class II petroleum liquids. It addresses minimum overfill and damage prevention practices for aboveground storage tanks in petroleum facilities, including refineries, marketing terminals, bulk plants, and pipeline terminals that receive flammable and combustible liquids. In § 194.105, operators may claim a 5% prevention credit to reduce the

calculated WCD of a breakout tank if the tank has an overfill protection system that complies with API RP 2350.

API Standard 620, Design and Construction of Large, Welded, Low-Pressure Storage Tanks, 11th Edition (including Addendum1, Addendum 2, and Addendum 3).

API Standard (Std) 620, 11th Edition (2008), along with Addendum 1 (2009), Addendum 2 (2010), and Addendum 3 (2012) specifies design, construction, and testing requirements for large, field-assembled, welded steel tanks used to store petroleum, petroleum products, or other liquids used in the petrochemical industry. Tanks designed, constructed, and tested in accordance with API Std 620 are rated to operate with a vapor pressure up to 15 psig and a metal temperature below 250°F. Section 194.105(b)(4) allows an operator to reduce the calculated WCD from a breakout tank by 10% if the tank is built and repaired in accordance with API Std 620.

API Standard 650, Welded Steel Tanks for Oil Storage, 11th Edition (Including Addendum 1, Addendum 2, Addendum 3, and Errata).

API Std 650, Eleventh Edition (2007), along with Addendum 1 (2008), Addendum 2 (2009), Addendum 3 (2011), and Errata (2011) establishes minimum requirements for material, design, fabrication, erection, and testing for vertical, cylindrical, aboveground, closed- and open-top, welded storage tanks in various sizes and capacities for internal pressures approximating atmospheric pressure. This standard applies only to tanks whose entire bottom is uniformly supported and to tanks in non-refrigerated service that have a maximum design temperature of 93°C (200°F) or less. In § 194.105, operators may claim a 10% prevention credit to reduce the calculated WCD of a breakout tank if the tank is built and repaired in accordance with API Std 650 and API Std 653, if applicable.

Additionally, operators may claim a 5% prevention credit if the breakout tank is cathodically protected and tested in accordance with API Std 650 and API 651, if applicable.

API Standard 653, Tank Inspection, Repair, Alteration, and Reconstruction, Third Edition (Including Addendum 1, Addendum 2, Addendum 3, and Errata).

API Std 653, Third Edition (2001), along with Addendum 1 (2003), Addendum 2 (2005), Addendum 3 (2008), and Errata (2008), provides minimum requirements for maintenance inspection, repair, alteration, relocation, and reconstruction of aboveground steel oil storage tanks once they have been placed in service, manufactured in accordance with API Std 650 or its predecessor API 12C. In § 194.105, operators may claim a 10% prevention credit to reduce the calculated WCD of a breakout tank if the tank is repaired in accordance with API Std 653 and built and repaired in accordance with API Std 650, as applicable.

NFPA-30, Flammable and Combustible Liquids Code, 2012 Edition (Including Errata 30-12-1 and Errata 30-12-2).

NFPA 30, 2012 Edition, provides fundamental safeguards for the storage, handling, and use of flammable and combustible liquids. It is a relatively broad document covering general fire safety considerations for facilities where flammable and combustible liquids are present and specific requirements for a number of different types of situations and facilities. In § 194.105(b)(4), NFPA 30 is referenced to determine whether prevention credits can be applied for breakout tanks for secondary containment or drainage/treatment. Most breakout tanks are aboveground storage tanks covered under Chapter 22 of NFPA 30. Section 22.11 covers the spill control specifications for dikes,

berms, secondary containment tanks, impoundment, and drainage. If a breakout tank is provided secondary containment in accordance with the applicable provisions of NFPA 30, then the operator may reduce the calculated WCD of the tank by 50% as a prevention credit.

Guidelines for the U.S. Coast Guard Oil Spill Removal Organization Classification Program

PHMSA proposes to IBR the United States Department of Homeland Security, United States Coast Guard (USCG) "Guidelines for the U.S. Coast Guard Oil Spill Removal Organization Classification Program," June 2019.[8] This document describes the requirements for OSROs to be classified by the USCG to respond to and recover oil spills of various sizes at various locations. The USCG classifies OSROs based on the location of their response resources and an assessment of their ability to mobilize those resources. An OSRO's response resources (e.g., booms, skimmers, vessels, storage, and personnel) and response times must meet or exceed the response capability caps needed by a facility, tank vessel, and non-tank vessel plan holder.[9] Pursuant to 33 CFR parts 154

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[8] *Available at* https://homeport.uscg.mil/Lists/Content/Attachments/55022/2019%20Guidelines%20for%20the%20US%20Coast%20Guard%20OSRO%20Classification%20Program.pdf

[9] Section 311(j) of the Federal Water Pollution Control Act (FWPCA), amended by section 4202 of the Oil Pollution Act of 1990 (OPA 90), requires the preparation and submission of response plans by the owners or operators of certain oil-handling facilities and for all vessels defined as "tank and non-tank vessels" (hereafter referred to as plan holders). Plan holders, through their response plans, must address the complex system for assembling, mobilizing, and controlling response resources to maintain statutory compliance as well as being prepared to respond to oil spills within their area of operation. Plan holders must submit a response plan to the USCG that identifies and ensures, by contract or other approved means, the availability of response resources (personnel and equipment) necessary to remove, to the maximum extent practicable, a WCD, including a discharge resulting from fire or explosion, and to mitigate or prevent a substantial threat of such a discharge. To relieve the burden upon plan holders to provide detailed lists of response resources, the USCG created the OSRO classification program, so that plan holders would be required to identify the OSROs only by name in their response plans, if the OSRO meets a plan holder's planning requirements.

and 155, OSROs are classified into three tiers based on their response time capabilities. Tier 1 OSROs have the most stringent response time requirements and must be able to deploy the specified quantity of initial resources on-site within 12 hours of notification (6 hours within a higher-volume port area). These response time requirements are further discussed in Chapter 4 of the USCG's OSRO Classification Program Guidelines. The document also addresses personnel training, equipment maintenance, and other requirements OSROs must meet to be classified. OSROs are periodically inspected by the USCG to confirm that they still meet the readiness requirements described in this document.

A contract with a USCG-classified OSRO is not required to comply with part 194; however, it is a convenient way of providing and documenting adequate response resources in an Oil Spill Response Plan (OSRP). PHMSA proposes to revise § 194.115 to adopt the response resources requirements from the USCG oil facilities regulations in appendix C to part 154, Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans, and the existing response time requirements identical to the WCD Tier 1 requirements in the "Guidelines for the U.S. Coast Guard Oil Spill Removal Organization Classification Program." Therefore, a contract with an OSRO classified by the USCG as a WCD Tier 1 for facilities meets the response resources requirements in §§ 194.115 and 194.107(b)(1)(vi).

Section 194.101 Operators Required to Submit Plans

PHMSA is proposing to remove § 194.101 and incorporate the most relevant exceptions found in this section into the applicability section at § 194.3. Including these conditions into the applicability statement serves the same purpose.

Section 194.103 Significant and Substantial Harm; Operator's Statement

PHMSA is proposing to remove this section and all references to "significant and substantial harm" and "substantial harm." Section 194.103 defines conditions where a pipeline facility can be expected to cause "significant and substantial harm to the environment in the event of a discharge of oil." If these conditions are not met, then a WCD can be assumed to cause "substantial harm." There is no functional difference between the requirements for facilities that could cause "significant and substantial harm" and facilities that could cause "substantial harm."

Currently, the requirements for preparing a "significant and substantial harm" or "substantial harm plans" are nearly the same, as shown in the table below.

A "significant and substantial harm" plan:	A "substantial harm" plan:
(1) includes a statement for why the pipeline could cause significant and substantial harm according to the conditions at 49 CFR 194.103;	(1) does not require a statement of harm;
(2) must be approved by PHMSA; and	(2) must be reviewed by PHMSA; and
(3) must be updated and resubmitted to PHMSA within 5 years of each approval.	(3) must be updated and resubmitted to PHMSA within 5 years of submission.

PHMSA reviews all "significant and substantial harm" and "substantial harm" plans equally and requires operators to correct any deficiencies the agency identifies. Operators with "significant and substantial harm" plans in compliance with part 194 receive a letter from PHMSA stating the agency approves the plan. Operators with "substantial harm" plans in compliance with part 194 receive a letter from PHMSA

stating the agency reviewed the plan for compliance. The differentiation in plan types appears to cause confusion as evidenced by submission of "significant and substantial harm" statements for pipelines that do not meet the criteria. PHMSA has also received "substantial harm" plans that include resubmittal requirements for "significant and substantial harm" plans. For this reason, PHMSA is proposing to remove § 194.103. In § 194.119, PHMSA proposes to review all facility response plans for compliance and issue letters of approval to acceptable plans, which is consistent with how PHMSA currently manages both types of plans it receives. Similarly, in § 194.121, PHMSA proposes to require operators to review and resubmit all response plans within five years of the date of the last approval. This administrative change will not impact safety since the majority of plans are updated before the five-year resubmission timeframe due to other changes affecting a plan.

Section 194.105 Worst Case Discharge

Each operator must determine the WCD of oil possible from its pipeline facility. PHMSA is proposing to remove the requirement to include historical discharge volumes in the WCD calculation and allow the use of spill models. Currently, the regulations define a WCD as the largest volume of oil discharged when comparing: (1) the maximum release from a pipeline line section; (2) the capacity of the single largest breakout tank, or capacity of a battery of tanks within a single secondary containment, with applicable prevention credits applied and; (3) the largest historic discharge. An operator must provide documentation showing that it considered and correctly calculated the potential discharge volume for each scenario. PHMSA then compares the operator's historical and calculated discharge volumes during its review of the operator's entire FRP. If the

historical volume is greater than the calculated volume, PHMSA considers the calculation incorrect, and the operator must recalculate the volume or explain the anomaly.

PHMSA has determined that requiring operators to submit historical discharge volumes in their FRPs is unnecessary and duplicative of other reporting requirements in the Federal Pipeline Safety Regulations. Removing the requirement for operators to submit this information should have no effect on safety. The largest historical discharge is almost never the WCD and PHMSA has access to historical spill volumes through accident reports. Only the largest of the listed estimates is the WCD, and in the past five years, PHMSA has found only one instance in which a plan noted a historic spill volume that exceeded the calculated WCD volume, and in that instance, the difference was less than 50 barrels of hazardous liquid.

PHMSA will still have access to historical spill information. Section 195.50 requires operators to report accidents to PHMSA via DOT Form 7000.1, which includes the volume of product spilled. PHMSA can use the data from accident reports to evaluate the historic WCD volume of a facility instead of requiring the operator to provide the information separately. Removing the requirement to report historic discharge in § 194.105(b)(2) will provide some cost savings to operators when preparing their plans without impacting the quality of FRPs or reducing the data available for analysis by PHMSA. The revised requirements at § 194.105 would require calculations for: (1) the maximum release from a pipeline section, and (2) capacity of the single largest breakout tank or battery of tanks within a single secondary containment with applicable prevention credits applied.

PHMSA is also proposing to clarify that an operator may use oil spill modeling programs to calculate the WCDs. These programs calculate the likelihood of a spill, as well as the magnitude and environmental impacts that might occur. An adequate spill model could also provide more accurate predictions of potential spill volumes. Several operators use spill models to calculate WCD for State-required response plans or to assist them with managing the integrity of their pipeline facilities. PHMSA is aware of several models that use the same variables as the current regulatory requirements, such as pipeline diameter, line section length, detection and shutdown times, and maximum product flow rates. Certain oil spill modeling programs may also consider terrain, proximity to navigable waters, mechanical capabilities of valves, and other variables. These models can also provide valuable information if a spill were to occur anywhere along the pipeline facility, not just at the location of the WCD.

Section 194.107 General response plan requirements.

Section 194.107(a) describes the general content, such as procedures and resources, an operator must include in a response plan. An operator's response plan must prove that the operator can adequately respond to a WCD. PHMSA is proposing a number of revisions to codify PHMSA policy, eliminate redundant reporting, and make clarifications consistent with Federal policy and terminology. Together, these revisions will result in higher quality FRPs, improved regulatory clarity, and reduced burden.

Consistent with the revisions to § 194.103 discussed earlier, PHMSA is proposing to amend § 194.107(a) to remove any discussion of "significant and substantial harm." PHMSA is also proposing to remove the reference to the term "substantial threat." Operators must consider WCDs regardless of whether they are a result of abnormal

operating conditions, so including the term substantial threat is redundant of the WCD requirement. In addition, PHMSA proposes to move the phrase "in adverse weather conditions" from the definition of WCD to § 194.107(a). While weather conditions do not change the calculations for WCD values, adverse weather or climate conditions can affect how to plan for and respond to spills. Adding a reference to adverse weather in the plan requirements would clarify that response planning must consider the operating environment that may be present during a spill. These changes codify PHMSA's current practices.

Additionally, PHMSA is proposing to revise § 194.107(b) to codify current PHMSA practices and streamline plan submission requirements for consistency with other Federal programs. For example, PHMSA currently lists a requirement to identify procedures for obtaining permission for in-situ burning or the use of dispersants under the section for complying with the NCP. However, in-situ burning and dispersants are not permitted in all areas, especially onshore. PHMSA therefore proposes to move this requirement to the section on complying with ACPs and clarifying that operators only need to provide procedures for those activities if they are allowed in the applicable ACP.

Section 194.107(c) specifies what each response plan must include. PHMSA is proposing changes to align the regulations with current PHMSA practices. PHMSA is proposing to revise § 194.107(c) by adding a requirement to include procedures for providing applicable Safety Data Sheets to emergency responders and the Federal On-Scene Coordinator (FOSC) within six hours of a spill and clarify that the immediate notification procedures in § 194.107(c)(1)(ii) must include notifications to the National Response Center (NRC). The requirement to provide Safety Data Sheets to first

responders codifies a self-executing requirement in section 14 of the Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2016 (Pub. L. 114-183) and NRC notification is already required at § 195.52. PHMSA is also proposing to eliminate the requirement to provide a list of response resources if an operator contracts with an OSRO classified by the U.S. Coast Guard (USCG) as a WCD Tier 1[10] organization for the operating environments ("River/Canal," "Inland," or "Great Lakes,") that the pipeline facility could affect. This is consistent with other Federal requirements, codifies PHMSA's current practices, and eliminates an unnecessary burden on the operator. OSROs provide lists of response resources to the expert agency USCG as a part of the classification program, therefore requiring this information from an operator is redundant. PHMSA also proposes to clarify that procedures for testing equipment are only necessary if an operator controls response equipment; procedures for maintaining equipment are inapplicable to operators that rely solely on OSROs and that do not own response equipment.

Finally, PHMSA is proposing editorial revisions throughout this section and changes to make these requirements more consistent with current response practices. The most notable of these changes include: (1) amending the term "drill program" to read "drill and exercise program"; (2) specifying that operators can satisfy the requirement for a drill and exercise program by following the current National Preparedness for Response

[10] WCD Tier 1, or W1 is a USCG classification for OSROs. WCD tier 1 has the most stringent requirements for deployment and response times among the WCD tiers. For more information, see the *Guidelines for the U.S. Coast Guard Oil Spill Removal Organization Classification Program*. April 2013. https://homeport.uscg.mil/Lists/Content/Attachments/1286/Guidelines%20for%20the%20USCG%20OSRO%20Classification%20Program.pdf.

Exercise Program[11] (PREP) guidelines; and (3) changing the term "response management system" to "incident command system" in § 194.107(c)(3). These changes ensure drill and exercise programs are consistent nationally and that PHMSA's terminology is consistent with the NCP and the National Response Framework.[12]

Section 194.109 Submissions of state response plans.

Section 194.109 allows operators to prepare and submit a response plan prepared to comply with a State law or regulation instead of creating a separate plan to comply with part 194, so long as the plan prepared for a State law or regulations meets or exceeds the requirements of part 194. PHMSA is proposing to allow operators to submit to PHMSA a plan that was prepared to meet a State requirement if the operator also submits a DOT-specific appendix addressing any additional Federal requirements under part 194 that are not addressed in the State plan. This will reduce the burden on operators to prepare separate plans for both PHMSA and a State.

Section 194.113 Information summary.

The required elements of an "Information Summary" are provided in § 194.113. Currently, the information summary for a core plan must provide a listing and description of each response zone covered by that plan. Operators have the option to subdivide their response plans into "response zones" in order to have different procedures for specific geographical areas. However, currently, any change in the configuration of response zones requires amending the core plan. PHMSA proposes to instead require that the core

[11] https://www.regulations.gov/document?D=USCG-2011-1178-0110.
[12] U.S. Department of Homeland Security, Federal Emergency Management Agency. 2013. *National Response Framework.* https://www.fema.gov/media-library-data/20130726-1914-25045-8516/final_national_response_framework_20130501.pdf.

plan list the applicable response zone appendices and move the requirement to list the response zones to those appendices. This will slightly reduce the burden to preparing and updating plans because it will allow operators to only modify response zone appendices without having to also change the core plan for changes to response zone configuration. PHMSA is also removing all references to "significant and substantial harm" consistent with the removal of § 194.103.

PHMSA also proposes to revise § 194.113 to clarify that maps, including current National Pipeline Mapping System (NPMS)[13] submissions, are an acceptable method of describing the location of the response zone and pipeline facilities. Clarifying that maps are an acceptable alternative to a listing of line segment locations codifies current PHMSA policy. The proposed rule would also allow operators to satisfy the requirements at § 194.113 by referencing the NPMS, provided that their NPMS submission is current and includes the PHMSA-issued FRP identification number. Currently, the NPMS allows, but does not require, an operator to include the FRP identification number in their geospatial data. Allowing operators to reference NPMS submissions eliminates the burden for operators to provide additional maps or a list of line segments in addition to information they already submit for the NPMS. Additionally, if an operator identifies the applicable FRPs on their NPMS submissions, PHMSA can use the NPMS to quickly and accurately identify that FRP for a FOSC during a spill or other type of emergency. Finally, PHMSA proposes eliminating the requirement for operators to provide a basis for determining if a WCD would cause "significant and substantial harm," as PHMSA is

[13] Section 195.61 requires operators to provide geospatial data regarding hazardous liquid pipeline facilities to PHMSA.

proposing to remove that term from part 194. These changes result in a minor reduction in burden with no impact on the quality of operators' FRPs.

Section 194.115 Response resources.

PHMSA is proposing to harmonize its oil pipeline response planning requirements in § 194.115 with those of the USCG to ensure that pipeline operators have the necessary personnel and equipment available to remove to the maximum extent practicable, a WCD. This proposed amendment is based on recommendations from the National Transportation Safety Board's (NTSB) accident report on the Enbridge oil spill near Marshall, Michigan, in 2010.[14] The NTSB recommended a DOT audit of PHMSA's FRP program (NTSB Recommendation P-12-1) and recommended PHMSA amend part 194 to harmonize onshore oil pipeline response plan requirements with those of the USCG and the U.S. Environmental Protection Agency to ensure that operators have adequate resources available to respond to worst-case discharges (NTSB Recommendation P-12-9).

In response to these recommendations, DOT initiated an audit of the onshore pipeline facility response plan program, including an addendum from PHMSA. The DOT audit found that PHMSA's current regulations do not adequately specify the appropriate quantity or type of response resources needed to respond to a spill.[15] To address these issues, the audit recommended PHMSA amend §194.115(a) to reference

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[14] Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release, Marshall, Michigan, July 25, 2010, Pipeline Accident Report NTSB/PAR-12/01 (Washington, D.C.: National Transportation Safety Board, 2012).

[15] Audit Report: An Assessment of the Office of Pipeline Safety's Onshore Pipeline Facility Response Plan Program, U.S. Department of Transportation, June 19, 2017. https://www.transportation.gov/sites/dot.gov/files/docs/mission/administrations/office-policy/300246/osrp-audit-report-final-dotp-12-1and2.pdf.

the USCG's "Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans"[16] and to define the meaning of the response tiers in § 194.115(b).

PHMSA is proposing both of these amendments in this rulemaking. In § 194.115(a), PHMSA is proposing to require that operators have adequate response resources as defined in USCG's "Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans." Those guidelines define how to identify adequate response resources to remove, to the maximum extent practicable, a WCD. The proposed changes will not affect the cost of operators' compliance with part 194, as PHMSA uses the USCG's "Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans" and the USCG Response Resource Inventory to assess and verify the adequacy of operator's response resources in FRPs.[17]

In § 194.115(b), PHMSA is proposing to include additional guidance on the meaning of the response tiers. The USCG's "Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans," which PHMSA is proposing to reference in paragraph (a), require an operator to ensure the availability of certain resources within certain response times for each of three tiers. Tier 1 resources are local resources that are available for the initial response. Tier 2 resources are regional resources available within a longer time period and Tier 3 resources are national level resources available within an even longer period. PHMSA is proposing, consistent with

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[16] 33 CFR part 154, appendix C.

[17] At the recommendation of NTSB, PHMSA harmonized its procedures for reviewing oil spill response plans with those of the USCG and the EPA. More information can be found at https://www.ntsb.gov/safety/safety-recs/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=P-12-009.

its current practice, to clarify that the response times that operators must use differ than the times referenced in the Guidelines. Specifically, PHMSA clarifies that a more rapid response to a WCD is required in "high-volume areas" as defined in § 194.5, rather than in "higher volume port areas" defined by the USCG in 33 CFR 154.1020. PHMSA's definition includes substantially more inland waterways than the USCG definition, which is limited to 5 ports and 2 rivers. For example, while the Guidelines require Tier 1 resources capable of responding to a WCD arrive within 12 hours at a Great Lakes location, PHMSA requires that Tier 1 resources arrive within 6 hours at any high-volume area, which includes the Great Lakes.

As discussed above in the discussion of § 194.107, an operator need not provide a list of response resources if that provides evidence of a signed, current contract with an OSRO that has received a WCD1 classification from the USCG. The USCG has determined that an OSRO that has received this classification is capable of deploying the maximum resources that can reasonably respond to any size spill. In this situation, PHMSA determines compliance with § 194.115 by checking whether sufficient WCD1-classified OSRO facilities are located within 6 hours of all high-volume areas within a response zone, or 12 hours of all other areas. An operator that satisfies this requirement has shown that it has ensured the availability of the highest possible amount of resources within the shortest, Tier 1 timeframes, and thus generally will greatly exceed the requirements of § 194.115.

Section 194.119 Submission and approval procedures.

PHMSA is proposing minor clarifications to § 194.119 to require operators submit FRPs electronically in a PDF or HTML format. The current regulations require

operators submit two copies of each FRP; this is duplicative and has led some operators to believe that PHMSA requires them to submit both electronic and paper copies of each FRP. PHMSA prefers that operators submit FRPs electronically. Clarifying that operators only need to submit an electronic copy of each FRP eliminates unnecessary costs associated with printing, shipping, scanning, and storing those documents.

PHMSA is also proposing to require operators respond to PHMSA's notification of any alleged deficiency in response plans within 30 days, consistent with the timeframe given for operators to submit a petition for reconsideration of PHMSA's determination of the adequacy of their plan. Additionally, the proposed rule requires PHMSA approval for all plans and removes the reference to the terms "substantial harm" and "significant and substantial harm plans" in this section since PHMSA proposes to remove those terms from all of part 194. Finally, PHMSA is proposing to revise § 194.119 to state that PHMSA may send a copy of a response plan to the FOSC when requested instead of requiring an operator to provide a plan to the FOSC. PHMSA can provide FRPs to FOSCs when necessary and relieve operators of this burden since PHMSA maintains electronic copies of the FRPs.

Section 194.121 Response plan review and update procedures.

PHMSA is proposing revisions to the response plan and review procedures in § 194.121 to require operators to review and resubmit all response plans at least every five years from the date of the last approval. Consistent with its proposal to remove references and requirements based on the terms "substantial harm" and "significant and substantial harm," PHMSA is removing instances of those terms in this section as well.

Additionally, PHMSA proposes to clarify that an operator must submit an FRP before a new oil pipeline facility or an extension of an existing pipeline facility becomes operational. As currently written, one could interpret the regulations to require that operators submit an FRP for a pipeline facility that is under construction. OPA 90 applies to a transportation-related pipeline facility that could discharge oil; a plan is not required during construction because during construction there is no oil in the pipeline that can be discharged.

Consistent with allowing operators to reference the NPMS to satisfy the requirement in § 194.113 to provide the location of response zones and pipeline facilities, PHMSA proposes to revise the instructions for updating line section information to include newly constructed or extended pipelines that are not yet available in NPMS. Operators with new segments may continue to reference the NPMS for the existing segments, but must include a list and description of any segments that are not currently available in the NPMS. This change ensures operators referencing the NPMS do not have to create and submit new maps of existing pipelines whenever pipelines are extended or added.

Appendix A to Part 194

Appendix A to part 194 provides a recommended format for preparing and submitting response plans required by part 194. PHMSA is proposing to amend this appendix to reflect the changes to part 194 set forth in this proposed rule and to add further guidance. For example, in "Section 5. List of Contacts," PHMSA is proposing to clarify that an operator must include 10-digit telephone numbers in their response plans as opposed to just "a telephone number." At "Section 9. Response Zone Appendices,"

PHMSA is proposing additional guidelines for operators to include procedures to obtain permission to use applicable alternative response strategies, such as in-situ burning or dispersants, consistent with applicable ACPs, which was omitted in the initial publication of part 194. Also in Section 9, PHMSA proposes to include procedures for operators to provide applicable Safety Data Sheets to emergency responders and the FOSC within six hours of a spill, consistent with the revisions to § 194.107(c) and section 14 of the PIPES Act of 2016 (Pub. L. 114-183).

Appendix B to Part 194

PHMSA is proposing to add the Great Lakes to the list of "Other Navigable Waters" in appendix B to part 194. This change will affect one operator whose pipeline currently crosses the Great Lakes, but PHMSA does not anticipate this change will affect that operator's plan.

C. Part 195 Transportation of Hazardous Liquids by Pipeline

Part 195 contains the Federal safety regulations for pipeline facilities used to transport hazardous liquids and carbon dioxide. Those regulations include reporting requirements and standards for the safe design, construction, testing, operation, and maintenance of hazardous liquid pipeline facilities. PHMSA is proposing amendments to part 195 to adjust the monetary damage criterion for reporting pipeline accidents for inflation, clarifying that operators may monitor cathodic protection rectifiers remotely, and correcting the organization of the IM guidance in appendix C of part 195. PHMSA also proposes editorial amendments to § 195.3 to meet requirements from the Office of the Federal Register and update the address for API.

Section 195.50 Reporting accidents and § 195.52 Immediate notice of certain accidents.

PHMSA is proposing to revise the definition of an "accident" at §§ 195.50 and 195.52 to adjust the monetary damage threshold criterion for inflation. This proposed amendment changes the criteria for submitting accident reports and giving immediate telephonic notification to the NRC. PHMSA is proposing adjusting the value of the property damage threshold from $50,000 to $118,000. In part 195, property damage includes the cost of cleanup and recovery, value of lost product, and damage to the property of the operator or others, or both. Operators would still be required to report any accident that caused a death or a personal injury requiring hospitalization; that resulted in either a fire or explosion not intentionally set by the operator; that resulted in pollution of any stream, river, lake, reservoir, or other similar body of water; or that is otherwise significant in the judgment of the operator.

On May 3, 1984, PHMSA's predecessor agency, the Research and Special Programs Administration, promulgated a definition for an "incident" at § 191.3 to establish criteria that would trigger requirements to report specific events on gas pipeline facilities to PHMSA.[18] The 1984 definition of an incident included a property damage threshold of $50,000. In 1994, PHMSA adopted the same value for hazardous liquid pipeline accidents.[19] Today, the property damage criteria that triggers incident and accident reporting requirements are the same as they were in 1984 and 1994. PHMSA is

[18] Transportation of Natural and Other Gas by Pipeline: Annual Reports and Incident Reports, 49 FR 18960, (May 3, 1984).
[19] Regulatory Review: Hazardous Liquid and Carbon Dioxide Pipeline Safety Standards, 59 FR 33388, (June 28, 1994).

basing the proposed inflation adjustment in this rulemaking on the 1984 date that established the $50,000 value for gas pipelines so that the property damage criteria remain consistent between gas and hazardous liquid pipelines. PHMSA intends to propose a similar change for reporting incidents on gas pipeline facilities in a separate regulatory action.

One of the issues raised most frequently in comments submitted in response to the notification of regulatory reform (82 FR 45750; Oct. 2, 2017) was the $50,000 property damage threshold for reporting gas pipeline incidents and hazardous liquid pipeline accidents. Comments submitted in response to the notice of regulatory reform from API, AOPL, and GPA Midstream Association[20] supported an increase in the property damage threshold for reporting gas pipeline incidents and hazardous liquid pipeline accidents. Based on the average annual Consumer Price Index (CPI) from the Bureau of Labor Statistics, $50,000 in 1984 is approximately $118,000 in 2017 dollars.[21] At $50,000, the current criterion requires operators report relatively minor accidents that would not have been reported in 1984 due to inflation in property, equipment, and repair costs.

The proposed revision to the property damage threshold brings the accident reporting criteria in-line with the 1984 threshold in inflation-adjusted terms. Based on a review of previous accident reports, adjusting the figure for inflation would decrease the total number of events reportable as accidents by approximately 1%, and reduce those

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[20] Formerly the Gas Processors Association.

[21] Calculated by multiplying the original property damage criteria ($50,000) by the average CPI in 2017 divided by the average CPI in 1984. ($\$50{,}000 * (245.139/103.933) = \$117{,}931$, or approximately $118,000). This analysis is based on the CPI for all urban consumers (CPIAUCSL) from the Bureau of Labor Statistics, accessed via the Federal Reserve Bank of St. Louis. https://fred.stlouisfed.org/series/CPIAUCSL#0.

reportable due to only the property-damage criterion by approximately a third. This rulemaking assumes the threshold set 35 years ago is still appropriate for today once it is adjusted for inflation; however, since the original rulemaking 35 years ago an improved safety record has decreased the number of significant events, and the safety information needs may have changed. PHMSA seeks comment on whether the level of safety information needed from property damage only accident reporting should be updated to align with inflation, and the extent to which retaining a de facto lower threshold after inflation would provide beneficial information on contributing risk factors and accident trends.

PHMSA intends to periodically update the monetary damage threshold on a regular basis in the future, potentially biennially. Future updates would be based on the same formula used for this adjustment:

$$T_n = T_p \times \frac{CPI_n}{CPI_p}$$

Where T_n is the revised damage threshold, T_p is the previous damage threshold, CPI_n is the average CPI-U for the past calendar year, and CPI_p is the average CPI-U used for the previous damage threshold. PHMSA could subsequently update the monetary damage threshold in accordance with this formula either through notice and comment rulemaking, a direct final rule, notice on the PHMSA public website, or other means. This method is similar to the method that the Federal Railroad Administration uses to update the criteria for reporting accidents/incidents at 49 CFR 225.19 and appendix B to part 225. PHMSA seeks comments on the appropriate method and frequency for future updates to the monetary damage threshold. PHMSA intends to base any finalized version of this provision on the price level at the time of publication of the final rule.

The revised accident reporting criteria will result in fewer accident reports being submitted to PHMSA and fewer telephonic notifications to the NRC, resulting in cost savings to industry and reduced burden on government. While accident reporting does not directly affect safety, PHMSA acknowledges that the collection and analysis of accident data has indirect safety benefits to both operators and regulators. However, reporting accidents with relatively minor damage provides comparatively less information value than reports with greater damage.

Section 195.573 What must I do to monitor external corrosion control?

PHMSA is proposing to revise § 195.573(c) to clarify that operators may monitor rectifier stations remotely. Rectifiers are devices that direct an electrical current on a pipeline to prevent external corrosion. Section 195.573(c) currently requires operators to regularly inspect rectifiers on hazardous liquid pipelines to ensure that they are working correctly. Advances in technology make it possible for operators to monitor these electrical systems remotely, but it is unclear in the regulations if this is permissible. In this rulemaking, PHMSA is proposing to make it clear that operators may inspect rectifier stations directly onsite or by way of remote monitoring technologies. This rulemaking also proposes to specify that such an inspection will consist of amperage and voltage measures in order to clarify the requirements of this section for operators and PHMSA and State inspectors.

Remote monitoring is a safe and efficient alternative to in-person checks in the field; however, monitoring equipment and the rectifier itself must be properly maintained to function safely and as intended. PHMSA's experience has shown that rectifiers, often located in remote areas, can be subject to damage from a variety of sources, including

natural forces and vandalism. If an operator chooses to monitor a rectifier remotely, PHMSA proposes to require operators to physically inspect rectifier stations whenever they conduct a cathodic protection test under §195.573. In accordance with that section, this will typically occur once every calendar year, not to exceed 15 months.

Appendix C Guidance for Implementation of an Integrity Management Program.

PHMSA is proposing to make minor corrections to the guidance in part 195 for implementing Integrity Management (IM) programs on hazardous liquid pipelines. API and AOPL submitted comments in response to the notification of regulatory reform (82 FR 45750; Oct. 2, 2017) concerning appendix C of part 195, noting that portions of the guidance for hazardous liquid IM programs, with regard to the identification of High Consequence Areas (HCA), are either impracticable or misplaced. They commented that the guidance for identifying agricultural drainage tiles as possible could-affect HCAs is not feasible. While PHMSA provides geographical information system (GIS) maps of other HCAs to hazardous liquid pipeline operators through the National Pipeline Mapping System (49 U.S.C. 60132(d)), API and AOPL commented that drainage tiles are difficult to identify as they are neither mapped by PHMSA nor available from any other national-level data source. They also identified other items under the guidance for identifying HCAs that are more accurately categorized as guidance for identifying integrity risk factors elsewhere in the appendix.

In consideration of those comments, PHMSA has reviewed the guidance for implementing a liquid IM program outlined in appendix C of part 195 and is proposing revisions to address these issues. PHMSA proposes revised guidance for considering spills in fields and is moving details for considering the physical support of pipelines,

maximum operating pressure (MOP) exceedances, and natural force damage caused by earth movement or seismicity from the guidance for identifying segments that could-affect HCAs to the guidance on identifying threats.

PHMSA also proposes to leave the requirement to consider operating conditions (other than MOP exceedances) and flood zones where it currently is in the regulations and in the HCA identification guidance. API commented that it was not clear why overpressure conditions and natural force damage were relevant to identifying HCAs. PHMSA agrees that past exceedances of MOP are more relevant to threat identification; however, other pipeline operating characteristics such as pressure, flow, and mode of operation can influence the predicted spill volume, and therefore whether it could affect an HCA. Likewise, potential flood conditions may influence whether a release could affect an HCA.

These are primarily editorial revisions to non-binding guidance, therefore there are neither direct costs nor benefits. However, clearer and more practicable guidance may improve operators' implementation of the IM requirements.

V. Availability of Standards Incorporated by Reference

PHMSA currently incorporates by reference into 49 CFR parts 192, 193, and 195 all or parts of more than 80 standards and specifications developed and published by standard development organizations (SDO). In general, SDOs update and revise their published standards every 2 to 5 years to reflect modern technology and best technical practices. ASTM International (ASTM) often updates some of its more widely used standards every year. Sometimes multiple editions are published in a given year.

The National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, directs Federal agencies to use standards developed by voluntary consensus standards bodies in lieu of government-written standards whenever possible. Voluntary consensus standards bodies develop, establish, or coordinate technical standards using agreed-upon procedures. In addition, OMB issued Circular A-119 to implement section 12(d) of the NTTAA relative to the utilization of consensus technical standards by Federal agencies. This circular provides guidance for agencies participating in voluntary consensus standards bodies and describes procedures for satisfying the reporting requirements in the NTTAA.

Accordingly, PHMSA has the responsibility for determining, via petitions or otherwise, which currently referenced standards should be updated, revised, or removed, and which standards should be added to the Federal Pipeline Safety Regulations. Revisions to materials incorporated by reference in the Federal Pipeline Safety Regulations are handled via the rulemaking process, which allows for the public and regulated entities to provide input. During the rulemaking process, PHMSA must also obtain approval from the Office of the Federal Register to incorporate by reference any new materials.

Pursuant to 49 U.S.C. 60102(p), PHMSA may not issue a regulation that incorporates by reference any documents or portions thereof unless the documents or portions thereof are made available to the public, free of charge.

Further, the Office of the Federal Register issued a rulemaking on November 7, 2014, that revised 1 CFR 51.5 to require that agencies detail in the preamble of an NPRM the ways the materials it proposes to incorporate by reference are reasonably available to

interested parties, or how the agency worked to make those materials reasonably available to interested parties (79 FR 66278).

To meet its statutory obligation for this rulemaking, PHMSA negotiated agreements with various SDOs to provide free online access to standards that are incorporated by reference or proposed to be incorporated by reference. The standards in the proposed rule are available for view at the following locations during the comment period; API standards are available at http://publications.api.org/, and NFPA standards are available at https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/Free-access, and the "Guidelines for the U.S. Coast Guard Oil Spill Removal Organization Classification Program" is available at https://homeport.uscg.mil/Lists/Content/Attachments/55022/2019%20Guidelines%20for%20the%20US%20Coast%20Guard%20OSRO%20Classification%20Program.pdf.

In addition, PHMSA will provide individual members of the public temporary access to any standard that is incorporated by reference. Requests for access can be sent to the following email address: phmsaphpstandards@dot.gov.

VI. Regulatory Analyses and Notices

A. Legal Authority for this Rulemaking

This proposed rule is published under the authority of the Federal pipeline safety statutes (49 U.S.C. 60101 *et seq.*); Section 311 of the Clean Water Act; 33 U.S.C. 1321, as amended by the Oil Pollution Act (CWA); and E.O. 12777. E.O. 12777 delegated authority to the Secretary of Transportation, pursuant to 311(j)(5) of the CWA, to promulgate regulations requiring the owners and operators of transportation-related onshore facilities to prepare and submit FRPs. E.O 12777 also ordered the Secretary of

Transportation to review and approve the FRPs, in accordance with the CWA and promulgated regulations. The Secretary has delegated this authority under E.O. 12777 to the Administrator of PHMSA (49 CFR 1.97).

Section 60102(a) authorizes the Secretary of Transportation to issue regulations governing the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. Further, section 60102(l) of the Federal pipeline safety statutes states that the Secretary shall, to the extent appropriate and practicable, update incorporated industry standards that have been adopted as a part of the pipeline safety regulations. The Secretary has delegated the authority in section 60102 to the Administrator of PHMSA (49 CFR 1.97).

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

E.O. 12866, "Regulatory Planning and Review" (58 FR 51735; Oct. 4, 1993), and DOT's regulatory policies and procedures require that PHMSA submit for review "significant regulatory actions" to the Office of Management and Budget (OMB). This NPRM is not a significant regulatory action under section 3(f) of E.O. 12866 and was therefore not reviewed by OMB. This NPRM also is not significant under the Department of Transportation's Policies and Procedures for Rulemaking (49 CFR part 5).

E.O. 12866 requires agencies to design regulations "in the most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society." PHMSA anticipates that, if promulgated, this NPRM, would have economic benefits to the public and the regulated community by reducing unnecessary cost burdens without increasing risks to public safety or the environment. PHMSA estimates the proposed rule

will result in annualized cost savings of approximately $273,242 per year, based on a 7 percent discount rate. In support of this NPRM, PHMSA prepared an initial regulatory impact analysis (RIA) with estimated costs and benefits, which is available in the public docket.

C. Executive Order 13771 - "Reducing Regulation and Controlling Regulatory Costs"

This proposed rule is expected to be an E.O. 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's Preliminary RIA, which is available in the docket.

D. Executive Order 13132 - "Federalism"

E.O. 13132 (64 FR 43255; Aug. 10, 1999) imposes certain requirements on Federal agencies formulating or implementing policies or regulations that preempt State law or that have federalism implications. This NPRM does not impose a substantial, direct effect on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government. This NPRM also does not impose substantial direct compliance costs on State and local governments.

The proposed rule could have preemptive effect because the pipeline safety laws, specifically 49 U.S.C. 60104(c), prohibit State safety regulation of interstate pipelines. Under the pipeline safety law, States have the ability to augment pipeline safety requirements for intrastate pipelines but may not approve safety requirements less stringent than those required by Federal law. A State may also regulate an intrastate pipeline facility not otherwise covered by PHMSA regulations. In this instance, the

preemptive effect of the proposed rule is limited to the minimum level necessary to achieve the objectives of the pipeline safety laws under which the proposed rule is promulgated. Therefore, the consultation and funding requirements of E.O. 13132 do not apply.

E. Executive Order 13175 - "Consultation and Coordination with Indian Tribal Governments"

E.O. 13175, (65 FR 67249, Nov. 6, 2000), requires agencies to consider and consult with Tribal governments when formulating policies. PHMSA does not anticipate that this NPRM will significantly or uniquely affect Tribal governments or impose substantial direct compliance costs, so the funding and consultation requirements of E.O 13175 do not apply. PHMSA invites Tribal communities and governments to comment on this NPRM.

F. Executive Order 13211 - "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"

E.O. 13211 (66 FR 28355, May 22, 2001) requires agencies to submit "significant energy actions" to OMB for review. This NPRM is not a "significant energy action" under E.O.13211 because it is unlikely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, no additional analysis is necessary under E.O. 13211.

G. Executive Order 13272 - "Regulatory Flexibility Act"

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), as amended, requires Federal agencies to consider the impact of their regulatory proposals on small entities' concerns into account when developing, writing, publicizing, promulgating, and

enforcing regulations. PHMSA determined that, if finalized, the regulations in this NPRM would not have a significant economic impact on a substantial number of small entities. An analysis of the potential economic impacts of the proposed rule on small entities is included in the Initial Regulatory Flexibility Analysis, which is available for public review and comment in the docket for this rulemaking.

H. Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires Federal agencies to minimize paperwork burden imposed on the American public by ensuring maximum utility and quality of information collected by the Federal government. PHMSA estimates that the proposals in this rulemaking will impact the information collections described below.

Based on the proposals in this rule, PHMSA will submit an information collection revision request to OMB for approval based on the requirements in this proposed rule. The information collection is contained in the pipeline safety regulations, 49 CFR parts 190 through 199. The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection. The information collection burden for the following information collections are estimated to be revised as follows:

1. Title: Transportation of Hazardous Liquids by Pipeline: Record keeping and Accident Reporting.

OMB Control Number: 2137-0047

Current Expiration Date: 01/31/2023.

Abstract: This information collection covers general recordkeeping and the collection of information from hazardous liquid pipeline operators for accident reports. PHMSA estimates that due to the revised monetary damage threshold for reporting accidents operators will submit 40 fewer hazardous liquid accident reports per year. Therefore, PHMSA expects to eliminate 40 responses and 40 hours to this information collection per year as a result of the provisions in the proposed rule.

Affected Public: All hazardous liquid pipeline operators

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 1,192 (1,232-40)

Total Annual Burden Hours: 52,029 (52,429-400)

Frequency of Collection: Regular

2. Title: Response Plans for Onshore Oil Pipelines.

OMB Control Number: 2137-0589

Current Expiration Date: 06/30/2022.

Abstract: This information collection covers operators' submission of facility response plans for onshore hazardous liquid pipeline facilities. While the proposed rule would not reduce the number of required plan submissions, it would streamline some of the plan requirements, thereby reducing the burden hours per response. The proposed rule would reduce burden hours associated with justifying harm categories or preparing duplicate federal facility response plans in addition to state mandated response plans. Eliminating

the expectation to submit paper copies of facility response plans will reduce reporting costs but not paperwork burden hours.

Affected Public: Onshore Hazardous Liquid Pipeline Operators.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 540

Total Annual Burden Hours: 70,416 (73,980-3,564)

Frequency of Collection: On occasion.

I. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires Federal agencies to prepare and consider estimates of the budgetary impact of regulations containing Federal mandates upon State, local, and Tribal governments before adopting such regulations. This NPRM imposes no unfunded mandates. If promulgated, this rule would not result in costs of $100 million, adjusted for inflation, or more in any one year to either State, local, or Tribal governments, in the aggregate, or to the private sector.

J. National Environmental Policy Act

The National Environmental Policy Act (42 U.S.C. 4321 *et. seq.*) requires Federal agencies to analyze the impacts to the environment. PHMSA analyzed this NPRM in accordance with Section 102(2)(c) of the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508), and DOT Order 5610.1C. PHMSA has prepared a draft Environmental Assessment (EA) and has preliminarily determined this action will not significantly affect the quality of the human environment. A copy of the EA for this action is available in the docket. PHMSA invites comment on the environmental impacts of this proposed rulemaking.

K. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the spring and fall of each year. The RIN contained in the heading of this document is a cross-reference for this action to the Unified Agenda.

List of Subjects

49 CFR Part 190

Administrative practices and procedures, Penalties.

49 CFR Part 194

Environmental protection, Hazardous materials transportation, Incorporation by reference, Oil pollution, Petroleum, Pipeline safety, Pipelines, Reporting and recordkeeping requirements, Transportation, Water pollution control.

49 CFR Part 195

Hazardous materials transportation, Incorporation by reference, Integrity management, Pipeline safety, Pipelines.

For the reasons provided in the preamble, PHMSA proposes to amend 49 CFR parts 190, 194, and 195 as follows:

PART 190 - PIPELINE SAFETY ENFORCEMENT AND REGULATORY PROCEDURES

1. The authority citation for 49 CFR part 190 is revised to read as follows:

Authority: 33 U.S.C. 1321(b); 49 U.S.C. 60101 *et seq.;* and 49 CFR 1.97

2. In § 190.203, revise paragraph (e) and add paragraph (g) to read as follows:

§ 190.203 Inspections and investigations.

* * * * *

(e) If a representative of the U.S. Department of Transportation inspects a pipeline facility or investigates an accident or incident involving a pipeline facility, the operator must make available to the representative, pursuant to paragraph (g) of this section, all records and information that pertain to the event in any way, including but not limited to integrity management plans and test results. The operator must provide all reasonable assistance in the inspection or investigation. Any person who obstructs an inspection or investigation by taking actions that were known or reasonably should have been known to prevent, hinder, or impede an investigation, without good cause will be subject to administrative civil penalties under this subpart.

* * * * *

(g) When an operator submits records in response to a PHMSA inspection or investigation under this section, the operator must provide the records via hard copy or use an electronic or digital method such as email, data-storage device, or other means that comply with this section.

(1) Any electronic system must permit PHMSA to download and print a copy of each record free of redactions, watermarks, or other alterations, from any U.S.-based internet access point. Any electronic system for delivering records to PHMSA must not include activation codes to begin an individual session, internet connectivity requirements to view downloaded documents, document tracking features, login time-out intervals shorter than one hour, or pre-access conditions.

(2) Where an operator submits electronic records to PHMSA, the documents must be submitted in their original format unless PHMSA allows an alternative format. If the original format allows an operator to magnify a document while maintaining legibility; search a record for text; or search for specific records by name, date, or file type, then the operator may not alter the format of the record prior to submission in a way that limits the ability of PHMSA to use the same capabilities.

(3) If an operator uses an electronic portal or other system to provide records to PHMSA, the operator must provide the PHMSA personnel conducting the inspection or investigation with a point of contact who is responsible for addressing reported problems with accessing the system or obtaining records using the system.

(4) If PHMSA determines the form in which the records are provided would impede or otherwise prevent the efficient review of records in an inspection or investigation, or if the system is otherwise in conflict with PHMSA regulations, PHMSA may order an operator to deliver records in an alternative way. If PHMSA finds that an operator or a system alters records to remove functionality in a way that impedes the agency's review, PHMSA may require the operator to resubmit records in their original form.

3. In § 190.343, revise paragraphs (a) and (b) to read as follows:

§ 190.343 Information made available to the public and request for protection of confidential commercial information.

* * * * *

(a) *Asking for protection of confidential commercial information*. You may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps:

(1) Mark "CONFIDENTIAL" on each page of the original document containing information that you would like to keep confidential; and

(2) Explain in detail why the information you are submitting is confidential commercial information. General claims of confidentiality are not sufficient.

(3)(i) *Information submitted during a rulemaking proceeding or application for special permit or renewal*. When submitting information for a rulemaking proceeding or application for special permit or renewal, the submitter must send to PHMSA, along with the original document, a second copy of the original document with the confidential commercial information redacted.

(ii) *Information provided for any other reason*. When information is submitted for any reason other than that described in paragraph (a)(3)(i) of this section, the submitter may send to PHMSA, along with the original document, a second copy of the original document with the confidential commercial information redacted.

(b) *PHMSA decision.* If PHMSA decides to disclose the information, PHMSA will review your request to protect confidential commercial information under the criteria

set forth in the Freedom of Information Act (FOIA), 5 U.S.C. 552, including following the consultation procedures set out in the Departmental FOIA regulations. 49 CFR 7.29. If PHMSA decides to disclose the information over your objections, we will notify you in writing at least five business days before the intended disclosure date.

PART 194 - RESPONSE PLANS FOR ONSHORE OIL PIPELINES

4. The authority citation for 49 CFR part 194 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5) and (j)(6); sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; and 49 CFR 1.53.

5. Revise § 194.3 to read as follows:

§ 194.3 Applicability.

(a) Except for the pipelines listed in paragraph (b) of this section, this part applies to an onshore oil pipeline that, because of its location, the operator determines that oil discharged from any point in the pipeline facility can be expected to adversely affect, within 12 hours after the initiation of the discharge, any navigable waters of the United States or adjoining shorelines, public drinking water intakes, or environmentally sensitive areas.

(b) This part does not apply to an onsore oil pipeline whose line section is $6\frac{5}{8}$ inches (168 millimeters) or less in outside nominal diameter and is 10 miles (16 kilometers) or less in length, where the operator determines that it is unlikely that the worst-case discharge from any point on the line section would adversely affect, within 4 hours after the initiation of the discharge, any navigable waters, public drinking water intake, or environmentally sensitive areas.

6. Amend § 194.5 as follows:

a. Add the definition for “Area Contingency Plan (ACP)” in alphabetical order;

b. Remove the definition of “Barrel” and add the definition for “Barrel (bbl)” in its place;

c. Revise the definition of “Contract or other approved means;”

d. Add the definition for “Federal On-scene Coordinator (FOSC)” in alphabetical order;

e. Remove the definitions of “Major river;”

f. Add the definition for “National Contingency Plan (NCP)” in alphabetical order;

g. Remove the definition of “On-Scene Coordinator (OSC);”

h. Revise the definition of “Onshore oil pipeline facilities;”

i. Remove the definitions of “Specified minimum yield strength” and “Stress level;”

j. Add the definition for “Tertiary Containment” in alphabetical order; and

k. Remove the definition for “Worst case discharge” and add the definition for “Worst-case discharge” in its place.

The additions and revisions read as follows:

§ 194.5 Definitions.

* * * * *

Area Contingency Plan (ACP) means an Area Contingency Plan prepared in accordance with 33 U.S.C. 1321 (j)(4) and 40 CFR 300.210(c). This is a reference document prepared for the use of all agencies engaged in responding to environmental emergencies within a defined geographic area.

Barrel (bbl) means a unit of volume equivalent to 42 United States gallons (159 liters) at 60° Fahrenheit (15.6° Celsius).

* * * * *

Contract or other PHMSA-approved means is:

(1) A signed, active contract with an oil spill removal organization (OSRO) identifying and ensuring the availability of the necessary personnel or equipment within the stipulated response time in § 194.115;

(2) A written certification by the owner or operator that the necessary personnel or equipment can and will be made available by the owner or operator within the stipulated response times with supporting documentation to include a summary of any OSRO contracts, if applicable, with contract name, identifier and effective dates; or

(3) Documentation of active membership in an OSRO, cooperative, or mutual aid agreement that ensures the owner or operator's access to the necessary response personnel or equipment within the stipulated times.

* * * * *

Federal On-Scene Coordinator (FOSC) means the Federal official designated by the Administrator of the Environmental Protection Agency (EPA) or by the Commandant of the United States Coast Guard (USCG) to coordinate and direct Federal response under subpart D of 40 CFR part 300.

* * * * *

National Contingency Plan (NCP) means the National Oil and Hazardous Substances Pollution Contingency Plan codified in 40 CFR part 300. The NCP provides the national-level organization structures and procedures for preparing for and responding to discharges of oil and other pollutants.

* * * * *

Onshore oil pipeline facilities mean new and existing pipe, rights-of-way and any equipment, facility, or building used in the transportation of oil located landward of the "coast line," as defined under the Submerged Lands Act of 1953 (43 U.S.C. 1301(c)).

* * * * *

Tertiary Containment means a dike, berm or another physical barrier that is outside of a "secondary containment" barrier.

Worst-case discharge means the largest foreseeable discharge of oil, including discharge from fire or explosion. This volume will be determined by each pipeline operator for each response zone and is calculated according to § 194.105.

7. Revise § 194.7 to read as follows:

§ 194.7 Operating restrictions and interim operating authorization.

(a) Each operator of a pipeline subject to this part must prepare and submit a response plan to PHMSA as provided in § 194.119.

(b) An operator of a pipeline for which a response plan is required under this part may not handle, store, or transport oil in that pipeline unless the operator has submitted a response plan meeting the requirements of this part.

(c) An operator must operate its onshore pipeline facilities subject to this part in accordance with the response plan submitted to PHMSA.

(d) The operator of a pipeline facility subject to this part may continue to operate the pipeline for two years after the date of submission of a response plan, pending approval of a plan or finding that a plan does not meet all of the requirements of this part, only if the operator has submitted the certification required by § 194.119(e).

8. Add § 194.9 to read as follows:

§ 194.9 What documents are incorporated by reference partly or wholly in this part?

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, 202-366-4046 https://*www.phmsa.dot.gov/pipeline/regs*, and is available from the sources listed in paragraphs (a) through (c) of this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov or go to www.archives.gov/federal-register/cfr/ibr-locations.html.

(a) American Petroleum Institute (API), 200 Massachusetts Avenue NW., Suite 1100, Washington, DC 20001, and phone: 202-682-8000, Web site: *https://www.api.org/*.

(1) ANSI/API Recommended Practice 651, "Cathodic Protection of Aboveground Petroleum Storage Tanks," 3rd edition, January 2007, (ANSI/API RP 651), IBR approved for § 194.105(b).

(2) API Recommended Practice 2350, "Overfill Protection for Storage Tanks in Petroleum Facilities," 3rd edition, January 2005, (API RP 2350), IBR approved for § 194.105(b).

(3) API Standard 620, "Design and Construction of Large, Welded, Low-Pressure Storage Tanks," 11th edition February 2008 (including addendum 1 (March 2009), addendum 2 (August 2010), and addendum 3 (March 2012)), (API Std 620), IBR approved for § 194.105(b).

(4) API Standard 650, "Welded Steel Tanks for Oil Storage," 11th edition, June 2007, effective February 1, 2012, (including addendum 1 (November 2008), addendum 2 (November 2009), addendum 3 (August 2011), and errata (October 2011)), (API Std 650), IBR approved for § 194.105(b).

(5) API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction," 3rd edition, December 2001, (including addendum 1 (September 2003), addendum 2 (November 2005), addendum 3 (February 2008), and errata (April 2008)), (API Std 653), IBR approved for § 194.105(b).

(b) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, phone: 617-984-7275, Web site: *https://www.nfpa.org/*.

(1) NFPA 30 (2012), "Flammable and Combustible Liquids Code," including Errata 30-12-1 (9/27/11), and Errata 30-12-2 (11/14/11), 2012 edition, copyright 2011, (NFPA 30), IBR approved for § 194.105(b).

(2) [Reserved]

(c) United States Coast Guard (USCG), 2703 Martin Luther King Jr. Ave. SE, Washington, DC 20593, phone: 202-372-2231, and Web site: https://www.uscg.mil.

(1) "Guidelines for the U.S. Coast Guard Oil Spill Removal Organization Classification Program" June 2019, IBR approved for § 194.107(c).

(2) [Reserved]

§ 194.101 [REMOVED AND RESERVED]

9. Section 194.101 is removed and reserved.

§ 194.103 [REMOVED AND RESERVED]

10. Section 194.103 is removed and reserved.

11. Revise § 194.105 to read as follows:

§ 194.105 Worst-case discharge.

(a) Each operator must determine the worst-case discharge (WCD) for each of its response zones and provide the methodology, including all calculations, used to arrive at the volume.

(b) The WCD of each response zone is the largest of the volumes calculated in paragraphs (b)(1) and (2) of this section, as applicable. If a response zone contains both

tanks and pipelines, operators must perform and provide the calculations for both, but the WCD remains the largest of the two.

(1) The WCD from a pipeline is calculated using one of the following methods:

(i) The pipeline's maximum release time in hours, plus the maximum shutdown response time in hours (based on historic discharge data or in the absence of such historic data, the operator's best estimate), multiplied by the maximum flow rate expressed in barrels per hour (based on the maximum daily capacity of the pipeline), plus the largest line drainage volume after shutdown of the line section(s) in the response zone expressed in barrels (cubic meters); or

(ii) A spill model that provides a description of the model in the methodology along with inputs and variables used by the model (to include, at a minimum: pipe diameter, length, maximum flow rates, and detection and shutdown times). An operator must provide model outputs such as graphs or diagrams.

(2) The capacity of the single largest tank or battery of tanks within a single secondary containment system, adjusted for the capacity or size of the secondary containment system, expressed in barrels. Operators may claim up to 75 percent prevention credits for breakout tank secondary containment and other specific spill prevention measures as follows:

Prevention measure	**Standard (incorporated by reference, *see* § 194.9)**	**Credit (percent)**
(i) Secondary containment >100%	NFPA 30	50
(ii) Built/repaired to API standards	API Std 620, API Std 650, API Std 653	10

(iii) Overfill protection standards	API RP 2350	5
(iv) Testing/cathodic protection	API Std 650, ANSI/API RP 651, API Std 653	5
(v) Tertiary containment or drainage/treatment	NFPA 30 (Drainage/Treatment)	5

12. Revise § 194.107 to read as follows:

§ 194.107 General response plan requirements.

(a) Each response plan must include procedures and identify resources for responding to and mitigating a worst-case discharge from an onshore oil pipeline, including in adverse weather conditions. The operator must immediately carry out the provisions of the response plan whenever there is an oil discharge from the facility.

(b) Each response plan must be consistent with the National Oil and Hazardous Substance Pollution Contingency Plan (NCP) and the appropriate Area Contingency Plan(s) (ACPs). The requirements for consistency with the NCP and appropriate ACPs include the following:

(1) To be consistent with the NCP, a facility response plan must:

(i) Demonstrate an operator's clear understanding of the function of the Federal response structure, by providing procedures to notify the National Response Center that reflect the lead role of the Federal On-Scene Coordinator in pollution response; and

(ii) Establish provisions to ensure the protection of safety at the response site; and

(2) To be consistent with the applicable ACP the plan must:

(i) Identify and list the applicable ACPs;

(ii) Identify environmentally sensitive areas;

(iii) Establish procedures for obtaining permission for in-situ burning from the appropriate State or Federal authorities; and

(iv) If applicable, establish the procedures for obtaining an expedited decision on the use of dispersants or other chemicals.

(c) Each response plan must include:

(1) A core plan consisting of—

(i) An information summary as required in § 194.113;

(ii) Immediate notification procedures, including notification to the National Response Center in accordance with § 195.52;

(iii) Spill detection and mitigation procedures;

(iv) The name, address, and telephone number of the OSRO, if appropriate;

(v) Response activities;

(vi) A list of response resources, unless the operator provides evidence of a signed, current contract with an OSRO classified by the U.S. Coast Guard as a WCD Tier 1 organization, as defined and described in 33 CFR part 154 and "Guidelines for the U.S. Coast Guard Oil Spill Removal Organization Classification Program," for the operating environments ("River/Canal," "Inland," or "Great Lakes,") applicable to the location of the pipeline;

(vii) Names and telephone numbers of Federal, State, and local agencies which the operator expects to have pollution control responsibilities or support;

(viii) Training procedures;

(ix) Equipment testing, if an operator owns its response equipment;

(x) Description of a drill and exercise program. An operator will satisfy the requirement for a drill and exercise program by following the current National Preparedness for Response Exercise Program (PREP) guidelines. An operator choosing not to follow PREP guidelines must have a drill and exercise program that is equivalent to current PREP guidelines. The operator must describe the drill program in the response plan and PHMSA's Office of Pipeline Safety (OPS) will determine if the program is equivalent to PREP;

(xi) Procedures to provide Safety Data Sheets meeting 29 CFR 1910.1200 to emergency responders and the FOSC within 6 hours of notice of a spill to the National Response Center; and

(xii) Plan review and update procedures;

(2) An appendix for each response zone that includes the information required in paragraphs (c)(1)(i) through (ix) of this section and the worst-case discharge calculations that are specific to that response zone. An operator submitting a response plan for a single response zone does not need to have a core plan and a response zone appendix. The operator of a single response zone must have a single summary in the plan that contains the required information in § 194.113; and

(3) A description of the operator's incident command system including the functional areas of finance, logistics, operations, planning, and command. The plan must demonstrate that the operator's incident command system uses common terminology and has a manageable span of control, a clearly defined chain of command, and sufficient trained personnel to fill each position.

13. Revise § 194.109 to read as follows:

§ 194.109 Submission of state response plans.

(a) An operator may submit a response plan that complies with State law or regulation, if the State law or regulation requires a plan that provides equivalent or greater spill protection than a plan required under this part.

(b) A plan submitted under this section must:

(1) Have an information summary required by § 194.113; and

(2) Ensure through contract or other PHMSA-approved means the necessary private personnel and equipment to respond to a worst-case discharge or a substantial threat of such a discharge.

(c) An operator may submit a response plan prepared to comply with State law or regulation if the operator adds a DOT annex to the plan that meets all additional requirements of this part not addressed in the State plan.

14. In § 194.113:

a. Revise paragraphs (a)(2), (b) introductory text, and (b)(3) and (4);

b. Remove paragraph (b)(5);

c. Redesignate paragraph (b)(6) as paragraph (b)(5); and

d. Revise newly redesignated paragraph (b)(5).

The revisions read as follows:

§ 194.113 Information summary.

(a) * * *

(2) A list of the response zone appendices for which the core plan is applicable.

(b) The information summary for each response zone appendix or for plans with a single response zone, required in § 194.107, must include:

* * * * *

(3) The description or map of the response zone, including county(s) and state(s), for each response zone;

(4) A list or map of line sections for each pipeline contained in the response zone, identified by milepost or survey station number, or other operator designation. If an operator has submitted the PHMSA issued Facility Response Plan (FRP) identification number in its submission to the National Pipeline Mapping System (NPMS) in accordance with § 191.29 of this chapter, they may reference the NPMS to satisfy this requirement; and

(5) The type of oil and volume of the worst-case discharge.

15. Revise § 194.115 to read as follows:

§ 194.115 Response resources.

(a) Each operator must identify and ensure the resources necessary to remove or mitigate to the maximum extent practicable, a worst-case discharge in accordance with 33 CFR part 154, appendix C. Each operator must provide documentation of these resources by contract or other PHMSA-approved means.

(b) When determining the necessary resources for each response tier in accordance with paragraph (a) of this section, an operator must use the response times

specified in paragraphs (b)(1) and (2) of this section, rather than the times referenced in 33 CFR part 154, appendix C. Tier 1, Tier 2, and Tier 3 are different levels of response resources; Tier 1 represents the resources available within 12 hours (6 hours in a high-volume area) for an initial local response, while Tier 3 represents national-level resources available within 60 hours (54 hours in a high-volume area) that may be needed for spills with extensive impacts.

	Tier 1 – Initial Local Response	**Tier 2 – Regional Response**	**Tier 3 – National Response**
(1) High-volume area	6 hrs.	30 hrs.	54 hrs.
(2) All other areas	12 hrs.	36 hrs.	60 hrs.

16. Revise § 194.119 to read as follows:

§ 194.119 Submission and approval procedures.

(a) Each operator must submit an electronic copy of the response plan required by this part. The response plan must be submitted to PHMSA.OPA90@DOT.GOV or other PHMSA-approved electronic means.

(b) If PHMSA determines that a response plan does not meet all the requirements of this part, PHMSA will notify the operator of any alleged deficiencies. The operator has an opportunity to respond to PHMSA's notice within 30 days of issuance, including

the opportunity for an informal conference, on any proposed plan revisions and an opportunity to correct any deficiencies.

(c) An operator who disagrees with PHMSA's determination that a plan contains alleged deficiencies may petition PHMSA for reconsideration within 30 days from the date of receipt of PHMSA's notice. After considering all relevant material presented in writing or at an informal conference, PHMSA will notify the operator of its final decision. The operator must comply with the final decision within 30 days of issuance unless PHMSA allows additional time.

(d) PHMSA will approve the response plan if PHMSA determines that the response plan meets all requirements of this part. PHMSA may consult with the EPA or the USCG if a FOSC has concerns about the operator's ability to respond to a worst-case discharge.

(e) If PHMSA has not approved a response plan for a pipeline described in this part, the operator may submit a certification to PHMSA that the operator has obtained, through contract or other approved means, the necessary personnel and equipment to respond to a worst-case discharge or a substantial threat of such a discharge to the maximum extent practicable. The certificate must be signed by the qualified individual or an appropriate corporate officer.

(f) If PHMSA receives a request from an FOSC to review a response plan, PHMSA may provide a copy of the response plan to the FOSC. PHMSA may consider FOSC comments on response techniques, protecting fish, wildlife, and sensitive environments, and on consistency with the ACP. PHMSA remains the approving authority for the response plan.

17. In § 194.121, revise paragraphs (a), (b)(1), (7), and (8), and (c) to read as follows:

§ 194.121 Response plan review and update procedures.

(a) Each operator must update its response plan to address new or different operating conditions or information. In addition, each operator must review and resubmit its response plan in full at least every 5 years from the date of the last approval.

(b) * * *

(1) A new oil pipeline or an extension of an existing pipeline in a response zone where the new or extended pipeline is not covered by a previously approved plan prior to filling the pipeline with oil. An operator must include a list or map of the new oil pipeline or extension if the information is not available in NPMS per § 194.113(b)(4);

* * * * *

(7) A change in the NCP or an ACP that has a significant impact on the equipment appropriate for response activities; and

(8) Any other information relating to circumstances that may affect the full implementation of the plan.

(c) If PHMSA determines that a change to a response plan does not meet the requirements of this part, PHMSA will notify the operator of any alleged deficiencies, and provide the operator an opportunity to respond to PHMSA's notice within 30 days, including an opportunity for an informal conference, to any proposed plan revisions and an opportunity to correct any deficiencies.

* * * * *

18. Amend appendix A to part 194 as follows:

a. In “Response Plan: Section 1. Information Summary,” revise paragraphs (a)(2) and (b)(3) and (4), remove paragraph (b)(5), redesignate paragraph (b)(6) as paragraph (b)(5), and revise newly redesignated paragraph (b)(5);

b. In “Response Plan: Section 2. Notification Procedures,” revise paragraph (a);

c. In “Response Plan: Section 4. Response Activities,” revise paragraph (d);

d. In “Response Plan: Section 5. List of Contacts,” revise the introductory text;

e. In “Response Plan: Section 7,” revise the heading and paragraphs (a) and (b)(2); and

f. In “Response plan: Section 9. Response Zone Appendices,” revise paragraphs (a), (d), (e), and (k)(2).

The revisions read as follows:

Appendix A to Part 194—Guidelines for the Preparation of Response Plans

* * * * *

Response Plan: Section 1. Information Summary

* * * * *

(a) * * *

(2) A list of response zone appendices applicable to the core plan.

(b) * * *

(3) A description or map of the response zone, including county(s) and state(s);

(4) A list of line sections contained in the response zone, identified by milepost or survey station number or other operator designation or statement that the PHMSA assigned FRP identification is provided in the National Pipeline Mapping System; and

(5) The type of oil and volume of the worst-case discharge.

* * * * *

Response Plan: Section 2. Notification Procedures

* * * * *

(a) Notification requirements that apply in each area of operation of pipelines covered by the plan, including notification to the National Response Center and applicable State or local requirements;

* * * * *

Response Plan: Section 4. Response Activities

* * * * *

(d) Oil spill removal organizations available, through contract or other approved means, to respond to a worst-case discharge to the maximum extent practicable; and

* * * * *

Response Plan: Section 5. List of Contacts

Section 5 would include the names and addresses of the following individuals or organizations, with 10-digit telephone numbers at which they can be contacted on a 24-hour basis:

* * * * *

Response plan: Section 7. Drill and Exercise Procedures

* * * * *

(a) Announced and unannounced exercises;

(b) * * *

(2) Exercises involving emergency actions by assigned operating or maintenance personnel and notification of the qualified individual on pipeline facilities that are normally unattended conducted quarterly.

* * * * *

Response plan: Section 9. Response Zone Appendices.

* * * * *

(a) The names and 10-digit telephone numbers of the qualified individuals;

* * * * *

(d) Name, address, and telephone number of the OSRO;

(e) Response activities and response resources including—

(1) Equipment and supplies necessary to meet § 194.115;

(2) The trained personnel necessary to sustain operation of the equipment and to staff the OSRO and incident management team for the first 7 days of the response; and

(3) Procedures to obtain permission to use applicable alternative response strategies, such as in-situ burning or dispersants, consistent with applicable ACPs;

* * * * *

(k) * * *

(2) Procedures to provide Safety Data Sheets meeting 29 CFR 1910.1200 to emergency responders and the FOSC within 6 hours of a spill.

Appendix B to Part 194 [Amended]

19. In appendix B to part 194, add “The Great Lakes” to the list of “Other Navigable Waters” in alphabetical order.

PART 195 - TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

20. Revise the authority citation for part 195 to read as follows:

Authority: 30 U.S.C. 185(w)(3), 49 U.S.C. 5103, 60101 *et seq.*, and 49 CFR 1.97.

21. In § 195.3, revise paragraphs (a) and (b) introductory text to read as follows:

§ 195.3 What documents are incorporated by reference partly or wholly in this part?

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, 202-366-4046, https://*www.phmsa.dot.gov/pipeline/regs*, and is available from the sources listed in this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov or go to www.archives.gov/federal-register/cfr/ibr-locations.html.

(b) American Petroleum Institute (API), 200 Massachusetts Ave NW., Suite 1100, Washington, DC 20001, and phone: 202-682-8000, Web site: *https://www.api.org/*.

* * * * *

22. In § 195.50, revise paragraph (e) to read as follows:

§ 195.50 Reporting accidents.

* * * * *

(e) Estimated property damage, including the cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding $118,000.

23. In § 195.52, revise paragraph (a)(3) to read as follows:

§ 195.52 Immediate notice of certain accidents.

(a) * * *

(3) Caused estimated property damage, including cost of cleanup and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding $118,000;

* * * * *

24. In § 195.573, revise paragraph (c) to read as follows:

§ 195.573 What must I do to monitor external corrosion control?

* * * * *

(c) *Rectifiers and other devices*. Any device listed in table 2 to this paragraph (c) must be periodically electrically checked to ensure that adequate amperage and voltage levels needed to provide cathodic protection are maintained. An operator may perform checks at the equipment's physical location or by remote monitoring. The second column of table 2 to this paragraph (c) prescribes minimum frequencies for checks required for devices listed in the first column.

Table 2 to paragraph (c)

Device	Minimum frequency for checks

Rectifier Reverse current switch Diode Interference bond whose failure would jeopardize structural protection	At least six times each calendar year, but with intervals not exceeding 2 ½ months between inspections.
Other interference bond	At least once each calendar year, but with intervals not exceeding 15 months between inspections.

(1) Inspections may be done through remote measurement or through an onsite inspection of the device.

(2) Each remotely monitored rectifier must be physically inspected for continued safe and reliable operation whenever cathodic protection tests occur pursuant to paragraph (a)(1) of this section.

* * * * *

25. Amend appendix C to part 195 as follows:

a. Revise the introductory text and paragraphs I.B(3) and (6) through (11);

b. Remove paragraph I.B(12); and

c. Revise paragraphs II.A(11), (15), and (17).

The revisions read as follows:

Appendix C to Part 195—Guidance for Implementation of an Integrity Management Program

This appendix gives guidance to help an operator implement integrity management program requirements in §§195.450 and 195.452. This appendix is intended to give advice to operators on how to implement the requirements of the integrity management requirements. This appendix is not legally binding and conformity with this appendix is voluntary only. However, if an operator incorporates parts of this appendix into its integrity management program, the operator must then comply with those provisions. Guidance is provided on:

(1) Information an operator may use to identify a high consequence area and factors an operator can use to consider the potential impacts of a release on an area;

(2) Risk factors an operator can use to determine an integrity assessment schedule;

(3) Safety risk indicator tables for leak history, volume or line size, age of pipeline, and product transported, an operator may use to determine if a pipeline segment falls into a high, medium or low risk category;

(4) Types of internal inspection tools an operator could use to find pipeline anomalies;

(5) Measures an operator could use to measure an integrity management program's performance; and

(6) Types of records an operator will have to maintain.

(7) Types of conditions that an integrity assessment may identify that an operator should include in its required schedule for evaluation and remediation.

I. * * *

B. * * *

(3) Crossing of farm tile fields. Using available information and knowledge, an operator should consider the possibility of spillage in a field following a drain tile into a waterway.

* * * * *

(6) Operating conditions of the pipeline (pressure, flow, mode of operation, etc.).

(7) The hydraulic gradient of the pipeline.

(8) The diameter of the pipeline, the potential release volume, and the distance between the isolation points.

(9) Potential physical pathways between the pipeline and the high-consequence area.

(10) Response capability (time to respond, nature of response).

(11) Potential of terrain and waterways to be flooded and serve as a conduit to a high consequence area.

II. * * *

A. * * *

(11) Location related to potential flooding or ground movement (e.g., flood zones, seismic faults, rock quarries, and coal mines); climatic (permafrost causes settlement—Alaska); geologic (earthquakes, landslides or subsidence areas).

* * * * *

(15) Operating conditions of the pipeline (pressure, stress levels, flow rate, etc.). Consider if the pipeline has been exposed to an operating pressure exceeding the established maximum operating pressure.

* * * * *

(17) Physical support of the pipeline segment such as by a cable suspension bridge. An operator should look for stress indicators on the pipeline (strained supports, inadequate support at towers), atmospheric corrosion, vandalism, and other obvious signs of improper maintenance.

* * * * *

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Alan K. Mayberry,
Associate Administrator for Pipeline Safety.
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