

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 831

[Docket No.: NTSB–2023–0008]

RIN 3147–AA29

Authority of NTSB in Railroad, Pipeline, and Hazardous Materials Investigations

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The National Transportation Safety Board (NTSB) is publishing this advance notice of proposed rulemaking (ANPRM) to seek public feedback on whether it should define the terms “significant injury to the environment” and “substantial property damage” as they relate to the agency’s investigative authority involving pipeline accidents. Neither the agency’s statute nor the regulation currently defines these terms; thus, the NTSB seeks comments on whether defining them would better clarify the scope of regulatory coverage for its pipeline investigations. The issues raised in the comments submitted in response to this ANPRM will inform whether and how the NTSB will define these terms in its regulation.

DATES: Send comments on or before October 30, 2023.

ADDRESSES: You may send comments, identified by Docket Number (No.) NTSB–2023–0008, by any of the following methods:

- *Federal e-Rulemaking Portal:* <https://www.regulations.gov>.
- *Email:* rulemaking@ntsb.gov.
- *Fax:* 202–314–6090.
- *Mail/Hand Delivery/Courier:* NTSB, Office of General Counsel, 490 L’Enfant Plaza East SW, Washington, DC 20594.

Instructions: All submissions in response to this ANPRM must include Docket No. NTSB–2023–0008. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket, go to <https://www.regulations.gov> and search Docket No. NTSB–2023–0008.

FOR FURTHER INFORMATION CONTACT: William Thomas (Tom) McMurry, Jr., General Counsel, (202) 314–6080, rulemaking@ntsb.gov.

SUPPLEMENTARY INFORMATION: In accordance with the Independent Safety Board Act of 1974, as amended, the NTSB is required to “investigate or have investigated (in detail the Board

prescribes) and establish the facts, circumstances, and cause or probable cause of a pipeline accident in which there is a fatality, substantial property damage, or significant injury to the environment.” 49 U.S.C. 1131(a)(1)(D). The NTSB’s regulations found at 49 CFR 831.40(a)(2) further explain that the NTSB has the authority to investigate “pipeline accidents, explosions, incidents, and ruptures in which there is a fatality, significant injury to the environment, or substantial property damage.”

Notably, the agency’s regulation has neither a definition nor threshold for the terms “significant injury to the environment” or “substantial property damage” as used in § 831.40(a)(2). The NTSB believes that defining these terms will clarify the types of pipeline accidents that the NTSB will investigate. Thus, the NTSB is soliciting comments on the promulgation of the regulatory definitions of “significant injury to the environment” and “substantial property damage” particular to pipeline accidents.

The NTSB recognizes that pipeline regulations are more complicated and extensive than what can be realistically covered in this ANPRM as there are various Federal regulations addressing hazardous liquid and natural gas pipelines. Federal agencies with such regulations include the United States Coast Guard (USCG), the Department of Interior (DOI), and the Pipeline and Hazardous Materials Safety Administration (PHMSA) (an operating administration within the U.S. Department of Transportation (DOT)).

For example, there are also hazardous liquid dock lines that are regulated by USCG under 33 CFR part 154 (Facilities Transferring Oil or Hazardous Material in Bulk). Moreover, offshore hazardous liquid and natural gas lines are regulated by DOI under 30 CFR part 250 (Oil and Gas and Sulphur Operations in the Outer Continental Shelf). Additionally, 49 CFR parts 191 (Transportation of Natural and Other Gas by Pipeline: Annual Incident, and Other Reporting), 192 (Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards), 193 (Liquefied Natural Gas Facilities: Federal Safety Standards), 194 (Response Plans for Onshore Oil Pipelines), and 195 (Transportation of Hazardous Liquids by Pipeline) are PHMSA regulations pertaining to pipeline safety.

In addition to the aforementioned Federal regulations, there are individual state laws regarding intrastate pipelines that the NTSB also has the authority to investigate.

For purposes of this rulemaking, the NTSB finds it appropriate to align its rule with those promulgated by PHMSA, which is “responsible for regulating and ensuring the safe and secure movement of hazardous materials to industry and consumers by all modes of transportation, including pipelines.”¹ Accordingly, the NTSB reviewed PHMSA’s regulation to better understand how that agency defines both substantial property damage and significant harm to the environment.

While there are various PHMSA regulations as noted above, there are two of particular interest to the NTSB. As will be discussed further below, for substantial property damage, the NTSB is considering adopting the reporting accident requirements provided in 49 CFR 191.9 (Distribution system: Incident report) for natural gas and 49 CFR 195.50 (Reporting Accidents) for hazardous liquids. For significant injury to the environment, the NTSB is considering adopting the standard contained in 49 CFR 194.103 (Significant and Substantial Harm: Operator’s Statement).

I. Substantial Property Damage

The NTSB is considering adopting the standards set forth in 49 CFR 191.9 (Distribution system: Incident report), and 49 CFR 191.15 (Transmission systems; gathering systems; liquefied natural gas facilities; and underground natural gas storage facilities: Incident report). The NTSB is also considering reporting pipeline accidents found in 40 CFR 195.50 (Reporting accidents [involving hazardous liquid pipelines]). These regulations require an incident/accident report for each failure in a pipeline system when there is a release of natural gas, hazardous liquid, or carbon dioxide. Section 195.50(d) specifies that an accident report is required “for each failure in a pipeline system . . . in which there is a release of the hazardous liquid . . .” resulting in “[e]stimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding” a specified amount.

If the NTSB uses PHMSA’s monetary threshold above or any other monetary threshold, the NTSB is further considering whether to have its reporting threshold indexed to inflation, which PHMSA does not calculate for hazardous liquids in 49 CFR 195.50(e). By contrast, for natural gas, PHMSA uses a property damage reporting threshold formula that is indexed to inflation in accordance with a formula

¹ <https://www.phmsa.dot.gov/regulations>.

detailed appendix A to part 191 (Procedure for Determining Reporting Threshold).

II. Significant Harm to the Environment

As noted above, the NTSB is considering the standard contained in § 194.103 (Significant and Substantial Harm: Operator's Statement) to define "significant injury to the environment." Section 194.103(a) explains when a line section "can be expected to cause 'significant and substantial harm to the environment' in the event of a discharge of oil into or on the navigable waters or adjoining shorelines."

Specifically, that regulation further provides that a line section may result in significant and substantial harm to the environment involving an oil discharge if the pipeline is greater than 6⁵/₈ inches in outside nominal diameter, greater than 10 miles in length, and the line section meets any of the following: has experienced within the previous five years either a release greater than 1,000 barrels, or two or more reportable releases; containing an electric resistance welded pipe, which operates at a maximum pressure that corresponds to a stress level greater than 50 percent of the specified minimum yield strength of the pipe; is located within a 5-mile radius of potentially affected public drinking water intakes and can reasonably be expected to reach such intakes; or located within a 1-mile

radius of potentially-affected environmentally sensitive areas, and could reasonably be expected to reach such areas. *See* 49 CFR 194.103(c).

Using PHMSA's regulation as a model, the NTSB proposes the following definition for "significant injury to the environment": "a discharge of 1,000 barrels or more of crude oil, refined petroleum product or anhydrous ammonia; into or on the navigable waters or adjoining shorelines or unusually sensitive areas." The NTSB notes that unusually sensitive areas are defined in PHMSA's 49 CFR 195.6 and includes environmentally sensitive areas and drinking water sources.

III. Public Comment

To assist the NTSB in defining "substantial property damage" and "significant injury to the environment" as those terms relate to pipeline accidents, the public is asked to address any or all of the following questions:

1. Should the NTSB define "substantial property damage"?
2. How should the NTSB define "substantial property damage"?
3. As noted above, PHMSA has accident report thresholds for property damage that are indexed to inflation. Should the NTSB's property damage value be consistent with PHMSA's reporting threshold?
4. How should the NTSB calculate the threshold value of "substantial property damage"?

5. Should "substantial property damage" be based on total property damage, pipeline property damage, or non-pipeline property damage?

6. Should the dollar amount established be indexed for inflation?

7. Should "substantial property damage" consider factors other than monetary value?

8. Should the same definition apply to both municipality owned pipelines and publicly-traded company pipelines?

9. Should the NTSB define "significant injury to the environment"?

10. Is the NTSB's proposed definition for "significant injury to the environment" sufficient?

11. How should the NTSB define "significant injury to the environment"?

12. Should the NTSB's definition of "significant injury to the environment" be consistent with the PHMSA's definition of "significant and substantial harm to the environment" under 49 CFR 194.103(c)?

List of Subjects in 49 CFR Part 831

Aircraft accidents, Aircraft incidents, Aviation safety, Hazardous materials transportation, Highway safety, Investigations, Marine safety, Pipeline safety, Railroad safety.

William T. McMurry, Jr.,

General Counsel.

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