

# PIPELINE SAFETY ALERT

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## As Obama Administration Draws to a Close, PHMSA Releases Final Rule for Hazardous Liquid Pipelines

On January 13, 2017, one week before the end of the Obama administration, the Pipeline and Hazardous Materials Safety Administration (PHMSA) released a final rule amending the federal safety standards for hazardous liquid pipelines in 49 C.F.R. Part 195 (Final Rule). The Final Rule is the latest step in a lengthy rulemaking process that began with the issuance of a wide-ranging request for public comment in October 2010, followed by the publication of a rulemaking proposal in October 2015 that contained a number of changes and additions to the Part 195 regulations. While still a significant regulatory action, PHMSA narrowed the Final Rule to address public comments, the recommendations of the Liquid Pipeline Advisory Committee (LPAC), and concerns raised by the Office of Management and Budget (OMB). PHMSA established a **general effective date of six months from publication** in the *Federal Register*, and **various effective dates** for specific changes to Part 195.

If previous transfers of presidential power serve as a guide, PHMSA's decision to release the Final Rule in the last days of the Obama administration may not mark the end of the rulemaking process. To avoid the possibility of being returned to PHMSA for further review by the Trump administration, the Final Rule must be published in the *Federal Register* by January 20, 2017. Even if that deadline is met, the Trump administration could extend the effective date of the Final Rule, reopen the public comment period, or take other actions.

### What's Changing (For Now)?

In the Final Rule, PHMSA adopts the following changes to Part 195:

- *Reporting Requirements for Gravity and Unregulated Gathering Lines.* Operators of certain gravity lines and unregulated gathering lines must submit annual, accident, and safety-related condition reports to PHMSA. The accident and safety-related condition reporting requirements go into effect **six months after the effective date** of the Final Rule. The new annual reporting requirement goes into effect **12 months after the effective date** of the Final Rule.

Exceptions are provided for low-stress gravity lines that do not extend more than one mile from a facility boundary and which do not cross a waterway used for commercial navigation; for certain gathering lines operated at low-stress; and for certain offshore pipelines located in state waters or on the Outer Continental Shelf. The new requirements also impose less reporting for gravity or unregulated gathering line operators, exempting them from the requirements to provide immediate notice of certain accidents, submit information to the National Pipeline Mapping System, or provide safety data sheets after a pipeline release.



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- *72-Hour Inspections After Certain Events.* Operators must conduct inspections of pipelines in areas affected by extreme weather, natural disasters, and other similar events. These inspections must commence within 72 hours of the cessation of the event, unless the operator notifies PHMSA that the personnel or equipment necessary to perform the inspection are not available. Operators are required to select an appropriate method for performing the initial inspection in order to determine the extent of any damage and necessity for conducting additional follow-up inspections. Appropriate remedial actions must be taken based on the results of the inspection to ensure the safe continued operation of the pipeline.
- *Non-IM Pipeline Assessments.* Operators of onshore transmission lines that can accommodate inline inspection (ILI) tools and which are not already subject to the pipeline integrity management (IM) requirements must perform integrity assessments at least **once every 10 calendar years**. These non-IM integrity assessments must be conducted with ILI tools, unless operational limitations require the use of alternative methods or technologies. A qualified person must analyze the data obtained from an assessment to determine if a condition could adversely affect the safe operation of the pipeline, and that determination must be made **within 180 days of discovery**, unless an appropriate notification extending that deadline is provided to PHMSA. Any actionable conditions discovered as a result of non-IM integrity assessment must be remediated in accordance with the existing, general repair criteria, on a schedule that prioritizes risk to people, property, and the environment (*PHMSA did not proceed with the more specific repair criteria proposed in 2015. See Repair Criteria discussion below*).
- *Leak Detection Systems.* Except for offshore gathering lines and regulated onshore gathering lines, all pipelines must have an effective system for detecting leaks. Operators must conduct an evaluation that considers certain factors in determining whether a leak detection system is effective, including length and size of the pipeline, type of product carried, the swiftness of leak detection, location of nearest response personnel, and leak history. Operators of new pipelines must have an effective leak detection system in place **within one year** of the effective date of the final rule. Operators of existing pipelines must have an effective leak detection system in place **within five years**. PHMSA withdrew its proposal to require leak detection systems for offshore gathering and onshore regulated rural gathering lines.
- *Repair Criteria.* For pipelines subject to IM, PHMSA has established more stringent repair criteria for anomalous conditions and adopted a two-tiered remediation schedule consisting of immediate and 270-day repairs. Although not part of PHMSA's 2015 proposal, the Final Rule includes provision that allows operators to perform engineering critical assessments to defer the remediation of crack or crack-like pipe defects, but not dents. For non-IM pipelines, PHMSA withdrew its proposals to establish more stringent repair criteria and remediation deadlines. Instead, PHMSA deferred to the existing, general repair criteria and added a new provision that requires remediation based on risk to people, property, and the environment.
- *ILI Tool Accommodation for IM Pipe.* All pipelines covered under the IM program must be made capable of accommodating ILI tools **within 20 years**, unless the basic construction of the pipeline will not accommodate the passage of an ILI tool, or the cost of complying with the requirement will lead to the abandonment of the line. Exceptions to the ILI tool accommodation requirement are provided for emergency situations and certain types of pipeline facilities, such as manifolds, station, tank farm, or storage piping, cross-overs, certain offshore piping, and other piping for which an ILI tool is not commercially available. Operators must petition the PHMSA Administrator for relief from the ILI accommodation mandate for situations involving emergencies, incompatible basic construction, or where the costs would necessitate abandonment.

- *PIPES Act Mandates.* As part of this Final Rule, PHMSA has codified two self-executing mandates from the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016. Pipelines must provide the designated Federal On-Scene Coordinator and appropriate state and local emergency responders with a safety data sheet for any spilled hazardous liquid within six hours of providing telephonic or electronic notice of an accident to the National Response Center. Operators of underwater hazardous liquid pipeline facilities that are not offshore and which are located in an high consequence area (HCA) at a depth greater than 150 feet under the surface of the water must conduct integrity assessments at least **once every 12 months**.
- *Other Changes.* PHMSA adopted other clarifying and substantive changes to the IM regulations, including new requirements for performing data integration and analysis, conducting annual verifications of HCA identifications of covered pipeline segments, and considering seismicity as a risk factor under the IM program.

## What's Next?

The Final Rule must be published in the *Federal Register* by January 20, 2017, to avoid the possibility of being returned to PHMSA by the Trump administration. Like prior administrations, it is expected that President-elect Donald Trump will issue a memorandum on Inauguration Day requiring that all final rules not yet published in the *Federal Register* be returned to the agency for further review. Even if the final rule is published in the *Federal Register* before January 20, the effective date could be extended. In their Inauguration Day memos, the George W. Bush and Obama administrations directed federal agencies to consider 60-day extensions for any published final rules that had not yet become effective. The Obama administration memo directed federal agencies to reopen the public comment period after extending the effective date of a final rule. It is unclear whether the Trump administration will take additional steps beyond those considered in past transfers of power.

An interested party may petition PHMSA for reconsideration of the Final Rule within 30 days of the *Federal Register* publication date. Any person adversely affected by the Final Rule may also file a petition for review in a U.S. Court of Appeals within 89 days of the *Federal Register* publication date.

Please contact one of the members of our Pipeline and HazMat Safety team to obtain more information about the implications of PHMSA's Part 195 final rule.



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*Led by three former Pipeline and Hazardous Materials Safety Administration (PHMSA) attorneys, our Pipeline and Hazardous Materials Safety practice group counsels pipeline and midstream companies, gas utilities, terminal operators, investors, trade associations, and other stakeholders, throughout the United States. James Curry, Keith Coyle and Brianne Kurdock together have more than 25 years of experience with a multitude of pipeline safety issues. They partner with client engineering and legal personnel to address day-to-day compliance questions and develop business and regulatory strategies.*

*\* Brianne Kurdock is licensed to practice law by the states of New Jersey and New York. Her application to the District of Columbia Bar is pending, and she is currently supervised by members of the firm who are admitted to the D.C. Bar.*