

## New PHMSA administrator confronts outstanding pipeline safety rulemaking proceedings

Howard R. Elliott was officially sworn in on October 30 as the new administrator of the Pipeline and Hazardous Materials Safety Administration (PHMSA). Administrator Elliott, who spent four decades in the freight rail industry and received a lifetime achievement award from the Association of American Railroads for hazardous materials transportation safety, is well positioned to lead the federal agency that administers the nation's hazardous materials transportation safety program. However, his tenure is likely to be defined, at least in the near term, by how he handles two significant pipeline safety rulemaking proceedings that PHMSA initiated during the previous administration.

### Pipeline Safety: Safety of Hazardous Liquid Pipelines, PHMSA-2010-0229

In October 2015, PHMSA issued notice of proposed rulemaking (NPRM) that contained significant changes to the hazardous liquid pipeline safety regulations in 49 C.F.R. Part 195. The proposed changes included requiring operators of gravity lines and unregulated rural gathering lines to submit certain reports; requiring inspections of pipelines in areas affected by extreme weather, natural disasters and other similar events; requiring periodic assessment of pipelines not already subject to the integrity management (IM) program regulations; requiring operators to have leak detection systems on non-IM pipelines; establishing more stringent pipeline repair criteria; and requiring operators to make pipelines in high consequence areas (HCAs) capable of accommodating inline inspection tools within 20 years, unless the pipeline's construction would not permit that accommodation.

PHMSA received more than 100 comments on the NPRM, including from several pipeline industry trade organizations and companies. These industry commenters expressed significant concerns with many aspects of the NPRM. The American Petroleum Institute (API) also submitted a third-party cost-benefit analysis of the proposals, which indicated that the total annualized costs would exceed \$600 million, more than 25 times the \$22.4 million estimate that PHMSA provided in its preliminary regulator impact analysis.

In February 2016, PHMSA presented the NPRM to the Liquid Pipeline Advisory Committee (LPAC), the federal advisory committee that reviews PHMSA's rulemaking proposals for hazardous liquid pipelines. The LPAC recommended that PHMSA make certain changes to the NPRM's proposals. Following the LPAC meeting, PHMSA received additional input from the Office of Management and Budget (OMB) about the lack of supporting data and potential economic impacts of the NPRM.

On January 13, one week before the inauguration of President Donald J. Trump, PHMSA released the pre-publication version of the final rule, which was not yet legally effective. PHMSA did not include all of the NPRM's proposals in the pre-publication version of the final rule. For example, PHMSA did not require operators of regulated rural gathering lines to conduct periodic pipeline assessments or install leak detection systems, and did not impose more stringent repair criteria and remediation deadlines for non-IM pipelines. PHMSA made these and other changes to address concerns raised by LPAC, OMB and commenters.

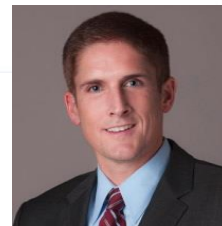
On January 20, shortly after President Trump's inauguration, the White House issued a memo imposing a temporary moratorium on most regulatory actions. The memo indicated that any final rules awaiting publication by the Office of Federal Register (OFR) should be withdrawn and returned to the originating agency for further review. PHMSA's Part 195 final rule, which had not yet been published by the OFR, was returned to the agency for further review under the terms of that memo.

According to the Department of Transportation's latest significant rulemaking report, PHMSA expects to resubmit the Part 195 final rule to the secretary of transportation for approval this December. The secretary's office is expected to complete its review and resubmit the final rule to OMB for approval in January 2018. If these projections hold, publication of the final rule in the *Federal Register* is expected to occur in late April.

### Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, PHMSA-2011-0023

In April 2016, PHMSA issued an NPRM that proposed extensive changes to the safety standards for gas transmission and gathering lines in 49 C.F.R. Part 192 and the federal reporting requirements in 49 C.F.R. Part 191. To address certain

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mandates in the 2011 reauthorization of the Pipeline Safety Act and related National Transportation Safety Board safety recommendations, PHMSA proposed new requirements for verifying the maximum allowable operating pressure and materials used in onshore steel gas transmission lines. PHMSA also proposed new requirements for conducting integrity assessments of certain transmission lines in moderate consequence areas; new corrosion control, pipeline repair and recordkeeping requirements; and changes to the integrity management requirements for gas transmission lines in high consequence areas.

In addition to the proposals for gas transmission lines, PHMSA proposed significant changes to the regulations for onshore gas gathering lines as well, primarily to address the growth of new pipeline infrastructure in the nation's shale plays. The proposed changes included new definitions for determining what qualifies as an onshore gas gathering line, new safety standards for regulated onshore gas gathering lines, which would apply to certain historically exempt onshore gas gathering lines in rural locations, and new reporting requirements for all gas gathering lines, whether regulated or not.

PHMSA received more than 400 comments on the NPRM, including from numerous pipeline industry trade organization and companies. As part of its comments, API submitted a thirdparty cost-benefit analysis of the proposed rules. The analysis found that PHMSA made numerous errors in developing the preliminary regulatory impact analysis for the NPRM, and that the agency overestimated the benefits of the proposed rules by approximately \$2.9 billion to \$3.1 billion and underestimated the costs by approximately \$32.8 billion.

In January, PHMSA held an initial meeting of the Gas Pipeline Advisory Committee (GPAC), the federal advisory committee that reviews its gas pipeline rulemaking proposals, to begin considering the NPRM. PHMSA held another GPAC meeting to continue reviewing the NPRM's gas transmission line proposals in June and has scheduled a follow-up meeting for December. While not yet announced, PHMSA has indicated that the agency will hold additional GPAC meetings in 2018 to consider the gas gathering proposals and other aspects of the NPRM. According to the Department of Transportation's latest significant rulemaking report, PHMSA expects to issue a final rule in August 2018. That schedule assumes that PHMSA will present the final rule to the secretary's office for consideration in March, a timeline that seems very unlikely given the current pace of the GPAC's review of the NPRM.