

# PIPELINE SAFETY ALERT

**Babst Calland**  
Attorneys at Law

## PHMSA Publishes Long-Awaited Final Rule for Hazardous Liquid Pipelines

On October 1, 2019, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule in the *Federal Register* amending the federal safety standards for hazardous liquids pipelines at 49 C.F.R. Part 195 (84 Fed. Reg. 52260) (Rule). The publication of the Rule ends a nearly decade-long rulemaking process that began in the wake of a significant pipeline accident in Marshall, Michigan. A prior version of the Rule, released in the closing days of the Obama administration, was returned to PHMSA for further review pursuant to a White House memorandum issued at the start of the Trump administration. This version of the Rule reflects changes that PHMSA made after receiving input from the current administration, the most significant of which is the removal of new requirements for performing pipeline repairs. The effective date of the Rule is July 1, 2020.

### What's in the Rule?

The Rule includes the following changes to Part 195:

- *Extension of reporting requirements to previously-unregulated gravity lines.* Operators of gravity lines must submit annual, accident, and safety-related condition reports to PHMSA. The accident and safety-related condition reporting requirements become effective on January 1, 2021, whereas the annual reporting requirement become effective on March 31, 2021. The Rule contains a narrow exemption from the reporting requirements for low-stress gravity lines that travel no farther than one mile from a facility boundary without crossing any waterways used for commercial navigation. The requirements to provide immediate notification of certain accidents, to submit information to the National Pipeline Mapping System, and to provide safety data sheets after a release do not apply to gravity lines.
- *Extension of reporting requirements to previously-unregulated gathering lines.* Operators of previously-unregulated gathering lines must submit annual, accident, and safety-related condition reports to PHMSA. As with the reporting requirements for gravity lines, the accident and safety-related condition reporting requirements become effective on January 1, 2021, and the annual reporting requirement become effective on March 31, 2021. The requirements to provide immediate notification of certain accidents, to submit information to the National Pipeline Mapping System, and to provide safety data sheets after a release do not apply to previously-unregulated gathering lines.
- *72-hour inspections after extreme weather events.* Operators are required to perform inspections of all pipeline facilities that are potentially affected by an extreme weather event that has a likelihood of damage to infrastructure by scouring or movement of soil surrounding the pipeline. Examples of extreme



### CONTACT

#### JAMES CURRY

JCurry@babstcalland.com  
202.853.3461

#### KEITH J. COYLE

KCoyle@babstcalland.com  
202.853.3460

#### BRIANNE K. KURDOCK

BKurdock@babstcalland.com  
202.853.3462

505 9th Street NW  
Suite 700  
Washington, DC 20004  
202.853.3455

**BABSTCALLAND.COM**

weather events include tropical storms, hurricanes, floods exceeding river, shoreline, or creek-high water banks, landslides, or earthquakes. The operator has 72 hours after the cessation of the event (*i.e.*, when the affected area can be safely accessed by personnel and equipment necessary to perform an inspection) to perform the inspection, unless the operator notifies PHMSA that it is unable to commence inspection due to the unavailability of necessary personnel or equipment. The inspection method is to be determined by the operator based upon consideration of the nature of the event and characteristics of the pipeline. Appropriate remedial action must be taken based upon the results of the inspection and may include reducing the operating pressure, repairing or replacing damaged pipeline facilities, or shutting down the pipeline.

- *Pipeline assessments for non-IM segments.* Operators of onshore pipeline segments that are piggable and which are not currently subject to integrity management (IM) program requirements must perform integrity assessments at least once every 10 years, including an initial assessment by October 1, 2029. Integrity assessments must be performed using inline inspection (ILI) tools or, where impracticable based on operational limits, an acceptable alternative technique such as pressure testing, external corrosion direct assessment, or other technology (upon notification to Office of Pipeline Safety). Qualified personnel must analyze the results within 180 days after the assessment to determine whether a condition exists that could adversely affect safe operation of the pipeline, unless the operator notifies PHMSA that meeting the 180-day is impractical. Conditions that could adversely affect the safe operation of a pipeline must be remediated pursuant to the existing repair criteria in Part 195.
- *Leak detection.* All hazardous liquids pipelines, except for offshore gathering lines and regulated onshore gathering lines, must have an effective leak detection system. The compliance deadline for pipelines constructed on or after October 1, 2019, is October 1, 2020. The compliance deadline for pipelines constructed prior to October 1, 2019, is October 1, 2024. In implementing these requirements, operators must perform an evaluation to determine what kinds of systems are necessary to adequately protect the public, property, and the environment.
- *Accommodation of ILI tools.* All hazardous liquids pipelines in HCAs and areas that could affect HCAs must be 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 if the operator determines that it would abandon the pipeline due to the cost of compliance (subject to PHMSA approval). This requirement does not apply to manifolds, station, tank farm, or storage piping, cross-overs, select offshore piping, other piping for which ILI tools are not commercially available, and for emergencies.
- *Incorporation of PIPES Act provisions.* Pursuant to statutory mandates in the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (PIPES Act), operators must provide the Federal On-Scene Coordinator and emergency responders with a safety data sheet associated with spilled hazardous liquids within six hours of notice to the National Response Center. Operators of underwater hazardous liquid pipeline facilities greater than 150-foot depth within HCAs and which are not offshore must also conduct annual integrity assessments.
- *Verification of pipeline segment identification.* Operators must verify the identification of segments in or that could affect HCAs on an annual basis. Verification does not necessarily require operators to perform a new segment analysis. Rather, operators must identify the factors used in the original analysis, determine whether any of those factors have changed, and assess whether that change would likely affect the results of the initial identification.

- *Updates to IM programs.* Operators must perform additional activities relating to information obtained from its IM program, including integration of information and consideration of any spatial relationships among anomalous information, including, for example, evidence of potential corrosion in an area with foreign pipeline crossings, interference from power lines, or evidence of land movement.

## What's not in the Rule?

The Rule does not include two changes to Part 195 that PHMSA proposed at earlier points in the proceedings:

- *Pipeline repair requirements.* Operators will not be required to comply with the new criteria and remediation schedules for performing pipeline repairs. PHMSA will be considering that issue in a separate rulemaking proceeding.
- *Engineering critical assessments.* Operators will not be required to perform engineering critical assessments (analytical procedures to determine maximum tolerable flaw sizes in steel pipe to maintain safe operations) in relation to the remediation of certain defects.

## What's next?

Interested parties may petition PHMSA for reconsideration of the Rule by October 31, 2019, or may file a petition in the U.S. Court of Appeals for judicial review by December 29, 2019.

Contact one of the members of Babst Calland's Pipeline and HazMat Safety team to obtain more information about the implications of PHMSA's Part 195 Rule or for a redline of the rule.



JAMES CURRY



KEITH COYLE



BRIANNE KURDOCK

*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.*