



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

April 21, 2022

**NOTICE TO HAZARDOUS LIQUID PIPELINE FACILITY OPERATORS AND
PHMSA STATE PARTNERS REGARDING INTERIM FINAL RULE (IFR) TITLED,
“PIPELINE SAFETY: UNUSUALLY SENSITIVE AREAS FOR THE GREAT LAKES,
COASTAL BEACHES, AND CERTAIN COASTAL WATERS”**

Re: Limited Enforcement Discretion

On December 27, 2021, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published in the Federal Register an Interim Final Rule (IFR) titled, “Pipeline Safety: Unusually Sensitive Areas for the Great Lakes, Coastal Beaches, and Certain Coastal Waters.”¹ The IFR responded to a statutory mandate² by revising the definition of unusually sensitive areas (USAs) at 49 CFR 195.6 to explicitly state that certain coastal waters, the Great Lakes, and coastal beaches are classified as USAs. That amended regulatory definition expanded application of PHMSA’s integrity management requirements to approximately 2,905 additional miles of hazardous liquid and carbon dioxide pipelines that are either located within, or that could affect, the Great Lakes, coastal beaches, or “certain coastal waters” (as that phrase is defined in § 195.6, as revised). Because the definition of USAs at § 195.6 is also used to determine when certain hazardous liquid pipeline facilities are regulated as “regulated rural gathering lines” (pursuant to § 195.11) or as category 1 or 2 “rural low-stress lines” (pursuant to § 195.12(b)(1)-(2)), the IFR’s revision of the definitions of USAs also resulted in some hazardous liquid gathering pipeline facilities becoming newly subject to regulation as “regulated rural gathering lines”, and resulted in some category 3 “rural low stress pipelines” becoming classified as category 1 or 2 lines subject to integrity management program and reporting requirements.

On March 1, 2022, GPA Midstream Association (GPA) and American Petroleum Institute (API) petitioned for judicial review of the IFR.³ GPA and API in parallel requested from PHMSA a stay of the IFR — either in its entirety or, in the alternative, partially so as to “only require operators to comply with the amended USA definition in 49 C.F.R. § 195.6(b)(6), (7), and (c) for purposes of determining if a pipeline is in a high consequence area (HCA) as

¹ 86 FR 73173 (Dec. 27, 2021) (IFR).

² PIPES Act of 2016, Pub. L. 114-183, at section 19; PIPES Act of 2020, Pub. L. 116-260 at Division R, section 120.

³ GPA Midstream Ass’n and Am. Petroleum Inst. v. DOT and PHMSA, No. 22-1037 (D.C. Cir.) (Petition).

defined in § 195.450.”⁴ On April 15, 2022, PHMSA notified GPA and API that PHMSA intends to promulgate a final rule that addresses the concerns raised by GPA and API in their Motion, the comments PHMSA received on the IFR, and the recommendations and report of a forthcoming meeting of the Liquid Pipeline Advisory Committee.⁵

This Notice advises regulated entities that until that finalized rule becomes effective, PHMSA will exercise its discretion to refrain from taking enforcement action alleging violations of obligations under § 195.11 or § 195.12 in connection with hazardous liquid pipeline facilities that are or will become subject to regulation as “regulated rural gathering lines” pursuant to § 195.11, or as categories 1 or 2 “rural low stress lines” pursuant to § 195.12(b)(1)-(2) and (c)(1)-(2), as a result of the amendments to § 195.6(b)(6), (7), and (c) codified by the IFR. PHMSA recommends that its state partners do the same. PHMSA will continue to enforce the IFR’s expanded definition of “unusually sensitive area” when identifying “high consequence areas” subject to the integrity management requirements. Nothing herein relieves operators from compliance with any other applicable provisions of the Federal pipeline safety regulations or other law, and PHMSA reserves the right to exercise all of its other authorities.

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⁴ Motion to Stay IFR Pending Jud. Rev., Doc. No. PHMSA-2017-0152-0010 (Mar. 1, 2022) (Motion).

⁵ The D.C. Circuit has granted the parties’ joint motion to hold the petition for review in abeyance pending PHMSA’s issuance of a finalized rule. See GPA Midstream Ass’n and Am. Petroleum Inst. v. DOT and PHMSA, No. 22-1037 (D.C. Cir. Apr. 22, 2022) (Order).