



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

1200 New Jersey Avenue, SE  
Washington, DC 20590

## **NOTICE OF LIMITED ENFORCEMENT DISCRETION FOR PARTICULAR TYPE C GAS GATHERING PIPELINES**

Re: Limited Enforcement Discretion for Type C Gas Gathering Pipelines with Outer Diameter Greater than or Equal to 8.625” but Less than or Equal to 12.75”, as to 49 CFR § 192.9 Compliance

On November 15, 2021, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published in the Federal Register a final rule titled, “Pipeline Safety: Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments” (Final Rule).<sup>1</sup> This Final Rule responded to Government Accountability Office recommendations and congressional mandates by extending existing design, operational and maintenance, and reporting requirements under the Federal pipeline safety regulations to previously unregulated, onshore gas gathering pipelines in rural areas. These newly-regulated gas gathering pipelines became subject to annual and incident reporting requirements under 49 CFR part 191. In addition, PHMSA identified that a subset (approximately 90,000 miles) of those pipelines present increased risks to public safety and the environment such that they should be classified as “Type C” gathering pipelines subject to certain safety requirements specified in 49 CFR § 192.9. Precisely which part 192 safety requirements apply to each Type C gathering pipeline depends on factors (including diameter, pressure, and the presence of buildings intended for human occupancy within a potential impact radius (PIR)) defining the risks posed to public safety and the environment. For example, a Type C gathering pipeline with a larger outer diameter (e.g., greater than 12.75”) must follow more rigorous part 192 safety requirements than a smaller outer diameter (e.g., between 8.625” up through 12.75”) Type C gathering pipeline. The Final Rule provides that operators have until May 16, 2023, to comply with the applicable requirements identified in § 192.9 and may, pursuant to § 192.9(g)(4), request an alternate compliance deadline should they face challenges meeting that compliance date.

On December 15, 2021, GPA Midstream Association (GPA) and American Petroleum Institute (API) jointly filed an administrative Petition for Reconsideration of the Final Rule, with an associated Motion to Stay Final Rule requesting that PHMSA stay certain portions of the

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<sup>1</sup> 86 FR 63266 (Nov. 15, 2021).

Final Rule.<sup>2</sup> On April 1, 2022, PHMSA denied the Petition and associated Motion.<sup>3</sup> API administratively appealed that denial and GPA filed a Petition for Review in the United States Court of Appeals for the District of Columbia Circuit.<sup>4</sup>

PHMSA understands that some operators of Type C gathering pipelines with smaller outer diameter—those with outer diameter greater than or equal to 8.625” but less than or equal to 12.75”—may face challenges complying with the § 192.9 safety requirements by the May 16, 2023, compliance date established in the Final Rule. Similarly, PHMSA understands that the greatest safety benefits anticipated from the Final Rule could be achieved where regulatory resources focus on first ensuring compliance with the Final Rule’s requirements governing higher-risk, larger-diameter (outer diameter greater than 12.75”) Type C gathering pipelines.

With those considerations in mind, and to facilitate broad-based, timely operator compliance with the Final Rule’s requirements while ensuring regulatory oversight activities prioritize the highest-risk Type C gathering pipelines, PHMSA will exercise its enforcement discretion to refrain from taking enforcement action for one additional year (i.e., from May 16, 2023 until May 17, 2024) against operators of existing Type C gathering pipelines with outer diameter greater than or equal to 8.625”, but less than or equal to 12.75” for violations of safety requirements identified in § 192.9. PHMSA expects affected operators will exercise diligence to take the necessary steps in preparation for full compliance with safety requirements specified in § 192.9 by the expiration of the one-year period of limited enforcement discretion on May 17, 2024 (while continuing throughout to operate their facilities in a safe manner). Towards that end, PHMSA notes that during the period of limited enforcement discretion API and GPA have committed to offer to all operators of these lines educational and information sessions on the requirements of § 192.9. PHMSA will also consider the extended compliance period provided for herein when reviewing any request for an alternative compliance deadline after May 17, 2024, for Type C gathering pipelines with outer diameter greater than or equal to 8.625” but less than or equal to 12.75”. Upon expiration of this limited enforcement discretion, on May 17, 2024, PHMSA will begin compliance inspections on Type C gathering pipelines with outer diameter greater than or equal to 8.625” but less than or equal to 12.75”, prioritizing those pipelines that have a building intended for human occupancy within its PIR. PHMSA will memorialize this enforcement discretion within implementation material for PHMSA inspectors and recommend that its state partners conform to the contents of this limited enforcement discretion.

This document is a notice of PHMSA’s limited exercise of its inherent enforcement discretion. This limited enforcement discretion applies only to existing Type C gas gathering pipelines with outer diameter greater than or equal to 8.625” but less than or equal to 12.75”, with respect to safety requirements identified in § 192.9; and it will remain in effect until May

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<sup>2</sup> Petition for Reconsideration of Final Rule, “Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments”, Doc. No. PHMSA-2011-0023-0493 (Dec. 15, 2021) (Petition); Motion to Stay Final Rule, Doc. No. PHMSA-2011-0023-0492 (Dec. 15, 2021) (Motion).

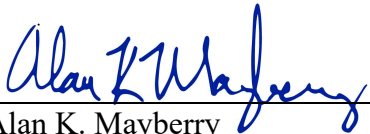
<sup>3</sup> Response to Petition for Reconsideration, Doc. No. PHMSA-2011-0023-0504 (April 1, 2022) (denying the Petition and Motion).

<sup>4</sup> Appeal of Decision Denying Petition for Reconsideration, Doc. No. PHMSA-2011-0023-0509 (April 30, 2022); GPA Midstream Ass’n v. DOT, Case No. 22-1070 (D.C. Cir.). Both proceedings are presently held in abeyance.

17, 2024. During this period, PHMSA will continue to enforce all other deadlines and regulatory requirements of the Final Rule. This limited enforcement discretion has no impact on, among other provisions, each of the following: part 191 reporting requirements for any Type C or R gas gathering pipeline; classification pursuant to § 192.8 of gathering pipelines as Type C by November 16, 2022; and § 192.9 safety requirements and compliance deadlines applicable to Type C gathering pipelines with outer diameter greater than 12.75”.

Regulated entities may rely on this notice as a temporary safeguard from PHMSA regulatory enforcement as described herein. To the extent this notice includes guidance on how regulated entities may comply with existing regulations, it does not have the force and effect of law and is not meant to bind the regulated entities in any way. Nothing herein prohibits PHMSA from rescinding this limited exercise of its enforcement discretion and pursuing an enforcement action if it determines that a significant safety issue warrants doing so. Nothing herein relieves operators from compliance with any other applicable provisions of Federal regulations or other law, and PHMSA reserves the right to exercise all of its other authorities.

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