



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

1200 New Jersey Avenue, SE  
Washington, DC 20590

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

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.”<sup>1</sup> The IFR responded to a statutory mandate<sup>2</sup> 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. The 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 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 definition 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.<sup>3</sup> 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 defined in § 195.450.”<sup>4</sup> 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

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<sup>1</sup> 86 FR 73173 (Dec. 27, 2021) (IFR).

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

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

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

comments PHMSA received on the IFR, and the recommendations and report of a meeting of the Liquid Pipeline Advisory Committee (LPAC).<sup>5</sup>

On April 21, 2022, PHMSA issued a notice of limited enforcement discretion (April 2022 Notice).<sup>6</sup> The April 2022 Notice advised regulated entities that, until the effective date of a forthcoming final rule, PHMSA would 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 further recommended that its state partners do the same. In the April 2022 Notice, PHMSA stated that it would continue to enforce the IFR’s expanded definition of “unusually sensitive area” when identifying “high consequence areas” subject to the integrity management requirements.

On August 17, 2022, the LPAC met to discuss the IFR. At that meeting, LPAC members unanimously recommended that “[w]ith respect to . . . certain coastal waters between the 3-nautical mile line and the 12-nautical mile line, PHMSA exercise enforcement discretion for the requirements in the IFR through the date of the publication of the Final Rule or August 17, 2023, whichever is earlier.”<sup>7</sup>

PHMSA has considered the LPAC’s unanimous recommendation and now issues a notice of limited enforcement discretion (Notice) consistent with that recommendation.<sup>8</sup> Specifically, this Notice advises regulated entities that PHMSA will exercise its discretion to refrain from taking enforcement action against hazardous liquid pipeline facilities in connection with regulatory requirements under 49 CFR part 195 that are, or will become, newly applicable to those facilities because they could affect resource areas that are newly designated as “certain coastal waters” solely due to the IFR’s definition of the term “territorial seas of the United States” to include waters between 3 nautical miles and 12 nautical miles seaward from the National Oceanic and Atmospheric Administration (NOAA)–determined baseline recorded in the geographic information system (GIS) dataset compiled by PHMSA.<sup>9</sup>

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<sup>5</sup> 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).

<sup>6</sup> The April 2022 Notice is available on PHMSA’s website at <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2022-05/Coastal%20USAs%20Partial%20Enforcement%20Discretion%20%28ALL%20Operators%20and%20State%20Partners%29.pdf>.

<sup>7</sup> LPAC Meeting Tr., Docket No. PHMSA-2022-0077-0006, at 168:18-171:7 (Aug. 30, 2022). PHMSA acknowledges that the LPAC recommendation also referred to regulated rural gathering lines and rural low-stress lines — which were addressed by the April 2022 Notice.

<sup>8</sup> PHMSA notes that neither this Notice nor the April 2022 Notice reflects, or should be understood to reflect, PHMSA’s position on the merits of statements (whether made in the Petition, by LPAC members, or by stakeholders during the LPAC meeting) regarding the compliance with applicable statutory requirements of the content of, or procedures employed in issuing, the IFR.

<sup>9</sup> See IFR at 73179-81 (describing the integration of NOAA baseline within the GIS dataset used in NPMS).

The period of this limited enforcement discretion will be from the date of issuance below until the earlier of either (1) the effective date of a published final rule, or (2) August 17, 2023. PHMSA recommends that its state partners exercise their enforcement responsibilities consistent with this Notice. This Notice complements and does not supersede the April 2022 Notice.<sup>10</sup>

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.

Issued October 20, 2022, in Washington, D.C.

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<sup>10</sup> PHMSA notes that the duration of each of this Notice and the April 2022 Notice are different. Although this Notice could expire if no final rule has been issued and becomes effective by August 17, 2023, the April 2022 Notice would not expire until a final rule has been issued and becomes effective.