



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

1200 New Jersey Avenue, SE  
Washington, DC 20590

April 13, 2023

Mr. Matthew L. Harvey  
Deputy General Counsel  
Office of General Counsel  
Illinois Commerce Commission  
160 N. La Salle St., Ste. C-800  
Chicago, IL 60601

Dear Mr. Harvey:

In a letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA), dated January 10, 2023, you requested an interpretation of the Federal pipeline safety regulations in 49 Code of Federal Regulations (CFR) Part 195 with respect to its applicability to a proposed carbon dioxide pipeline within the state of Illinois.

You stated a pipeline operator seeks a certificate under the Illinois Carbon Dioxide Transportation and Sequestration Act to construct a pipeline which will be used to transport carbon dioxide to a sequestration site within Illinois. You stated the applicant informed you the pipeline will be transporting at least 98 percent carbon dioxide in a fluid state and will be compressed to a supercritical state, and that the carbon dioxide will maintain the 98 percent concentration level and the fluid state throughout the pipeline system. You ask whether:

**Question 1:** PHMSA regulates the safety of interstate pipelines carrying shipment of carbon dioxide under 49 CFR Part 192, Part 195, or under any other statute or regulation; and

**Question 2:** If the answer to PHMSA's first question is yes, the extent and the frequency of safety inspections, record audits or field audits of such a pipeline.

To answer your questions the scope and definition of Part 195 for carbon dioxide are reprinted below.

The scope of 49 CFR Part 195 states:

49 CFR § 195.0 This part prescribes safety standards and reporting requirements for pipeline facilities used in the transportation of hazardous liquids or carbon dioxide.

Carbon dioxide is defined in 49 CFR § 195.2 as:

The Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety provides written clarifications of the Regulations (49 CFR Parts 190-199) in the form of interpretation letters. These letters reflect the agency's current application of the regulations to the specific facts presented by the person requesting the clarification. Interpretations are not generally applicable, do not create legally-enforceable rights or obligations, and are provided to help the specific requestor understand how to comply with the regulations.

*Carbon dioxide* means a fluid consisting of more than 90 percent carbon dioxide molecules compressed to a supercritical state.

Based on the above scope and definition of Part 195, PHMSA's responses to your questions are as follows:

**Response to Question 1:** Yes, per statutory authority (49 U.S.C. § 60101 et seq.), PHMSA regulates the transportation of carbon dioxide by pipeline under 49 CFR Part 195 if the carbon dioxide consists of more than 90 percent of the composition in a supercritical state.

**Response to Question 2:** PHMSA uses an integrated inspection process utilizing risk information and data to better focus inspection resources on higher risk facilities and areas of concern. By using information data about a specific pipeline system, PHMSA can identify regulatory requirements that will have the highest priority during an inspection. This data-driven process allows PHMSA to focus inspection resources on regulatory provisions which address the greatest identified risks and concerns.<sup>1</sup> While PHMSA serves as the federal pipeline safety regulator, pipeline operators must know, understand, and manage the risks associated with their own pipeline facilities. An operator is required to meet all applicable 49 CFR Part 195 requirements that include: annual accident and safety related condition reporting, design, construction, pressure testing, operation and maintenance, qualification of pipeline personnel, and corrosion control.

The state of Illinois is not participating in federal and state cooperative partnership for hazardous liquid (49 CFR Part 195) pipelines. Therefore, PHMSA performs the safety inspections (including design and construction of new pipelines), record audits or field audits of such pipelines within the state of Illinois. The pipeline operator is responsible for safely operating its pipelines and for meeting the 49 CFR Part 195 requirements to maintain pipeline safety.

If we can be of further assistance, please contact Tewabe Asebe at 202-366-5523.

Sincerely,

John A. Gale  
Director, Office of Standards  
and Rulemaking

Attachments

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<sup>1</sup> For additional details regarding PHMSA's inspection process, see <https://www.phmsa.dot.gov/regulatory-compliance/pipeline/field-operations-overview>.

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STATE OF ILLINOIS



ILLINOIS COMMERCE COMMISSION  
OFFICE OF GENERAL COUNSEL

January 10, 2023

Angela Pickett  
Community Liaison  
Operations and Standards, Central Region  
US Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
901 Locust, Kansas City, MO 64106

Office of Pipeline Safety (PHP-30)  
PHMSA, U.S. Department of Transportation  
1200 New Jersey Avenue SE., Washington, DC 20590-0001

Via electronic mail to [angela.pickett@dot.gov](mailto:angela.pickett@dot.gov); [phmsa.pipelinesafety@dot.gov](mailto:phmsa.pipelinesafety@dot.gov)

Re: PHMSA regulation and inspection with respect to pipelines used for shipment of carbon dioxide

Dear Ms. Pickett:

I write to you for the purpose of obtaining a written regulatory interpretation under 49 C.F.R. §190.11 from the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) regarding a matter currently pending before the Illinois Commerce Commission (“ICC”), which has been assigned ICC Docket Number 22-0497. A pipeline operator (“Applicant”) seeks a certificate under the Illinois Carbon Dioxide Transportation and Sequestration Act (“CO<sub>2</sub> Act”; 220 ILCS 75/1, et seq.) to construct a pipeline which will be used to transport carbon dioxide (“CO<sub>2</sub>”) to a sequestration site within Illinois. Based on the information currently available to the ICC Staff and the public, the pipeline in question will be jurisdictionally interstate. The Applicant states that “[t]he product transported by the pipeline will be at least 98% carbon dioxide in a fluid state and will [be] compressed to a supercritical state. The carbon dioxide will maintain the 98% concentration level and the fluid state throughout the pipeline system.” (Applicant Ex. 6.2, 6.) The Applicant also states that “[b]ecause the segments of pipeline will be transporting carbon dioxide, at least part of the time, in its supercritical state, it is within the pipeline safety jurisdiction of PHMSA, an agency within the USDOT.” *Id.* at 2. The Applicant further states that “the definition of ‘carbon dioxide’ in the PHMSA regulations is ‘a fluid consisting of more than 90 percent carbon dioxide molecules *compressed* to a

supercritical state' (emphasis added), not 'maintained' in a supercritical state. 49 C.F.R. §195.2." Id.

The ICC Staff respectfully requests a written regulatory interpretation from PHMSA regarding the following questions:

1. Whether PHMSA regulates the safety of interstate pipelines carrying shipment of carbon dioxide under 49 C.F.R. Part 192, Part 195, or under any other statute or regulation; and
2. Whether, to what extent, and with what frequency PHMSA conducts safety inspections, record audits or field audits of such a pipeline.

Please advise whether PHMSA requires additional information to provide a written regulatory interpretation in response to this request. My name, address and telephone number are as set forth below.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "MLH", is written over a horizontal line.

Matthew L. Harvey  
Deputy General Counsel  
Office of General Counsel  
Illinois Commerce Commission

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312 / 793-3243  
[matthew.harvey@illinois.gov](mailto:matthew.harvey@illinois.gov)

Michael Merchant, Executive Director, ICC  
Natalia Delgado, General Counsel, ICC  
Dr. James Zolnierrek, Chief, Public Utilities Bureau, ICC  
(all via e-mail)