

INSIGHTS

Opportunity to Improve PHMSA Guidance

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Earlier this month, the U.S. Department of Transportation (DOT) issued a notice seeking input from the public on existing guidance documents within DOT and its modal operating administrations, including [PHMSA](#). In particular, DOT seeks input on guidance documents that are no longer necessary, are cost-inducing, inconsistent or unclear, not conducive to consistent enforcement, or that need to be updated. The more specific the comments about the documents and the concerns with them, the better, along with suggested alternatives. The comment period remains open until April 8, 2019.

The notice relates back to a prior DOT notice [requesting comments on regulatory review](#) in October 2017, where DOT sought public comment on existing rules as well as guidance documents. Both this notice and the prior 2017 notice stem from the Trump Administration's Executive Orders regarding [deregulation](#) (E.O. 13771) and regulatory reform [regulatory reform](#) (E.O. 13777). In addition, this most recent notice was issued on the heels of DOT's posting of a new [guidance directive](#) from DOT's General Counsel outlining a more detailed clearance process for guidance that became effective in December 2018.

Regardless of the basis, the regulated community has a unique opportunity to recommend that particular guidance documents be repealed or revised. A wide array of PHMSA documents constitute guidance potentially subject to the notice, such as Agency Inspection Protocols, Staff Manuals and Instructions, Reporting Form Instructions (such as 7000.1 or 7100.2 incident and annual reports), Advisory Bulletins, Frequently Asked Questions, and even interpretations and policy statements. Other documents such as the [Pipeline Civil Penalty Summary](#) are also within the scope of the Notice.

Certain of PHMSA guidance materials are inconsistent, out of date, and unclear, and could benefit from revision at a minimum. Further, PHMSA at times relies on guidance documents which do not have the force of law to inform agency enforcement or corrective actions. Coupled with DOT's new focus on streamlining agency guidance, we encourage operators to consider submitting comments. To that end, we are particularly well positioned to assist clients in preparing comments to this Notice, given the breadth and depth of our national practice and experience.