

INSIGHTS

## Expansive Integrity Management Training and Qualification Advisory

April 10, 2017

By: [Catherine D. Little](#), [Annie Cook](#) and [Mandi Moroz](#)

PHMSA issued a brief [advisory](#) reminding gas transmission operators of training and qualification requirements under the integrity management regulations. The advisory responds to inconsistencies in operator implementation of these rules (at 49 C.F.R. Part 192.915) and outlines PHMSA's "expectations." Further, the advisory addresses inadequacies highlighted by a 2015 National Transportation Safety Board's (NTSB) [Safety Study](#). In issuing the advisory, PHMSA appears to be taking an expansive interpretation of certain aspects of its integrity management rules regarding training and qualifications, which may not be supported by the regulations and thus may not be enforceable.

### Background

PHMSA rules at 49 C.F.R. Part 192.915 simply require that an operator's Integrity Management Program (IMP) include training and qualification requirements for: (1) supervisory personnel with responsibilities related to IMP; (2) personnel conducting integrity assessments and who review and analyze the results of integrity assessments; and (3) personnel who implement preventive and mitigative (P&M) measures, including marking and locating and those directly supervising excavation work. In addition, 49 C.F.R. Part 192.911(l) requires that operator IMP programs include a quality assurance process as outlined in ASME B31.8S, Section 12. That ASME B31.8S section briefly notes that an operator's quality control plan should provide that "personnel involved in the integrity management program shall be competent, aware of the program and all of its activities, and be qualified to execute the activities within the program."

The NTSB finalized a Safety Study in 2015 analyzing the effectiveness of natural gas integrity management programs. Among other issues, this study concluded that professional qualification criteria for pipeline operator personnel performing integrity management functions are inadequate and recommended that PHMSA "revise 49 CFR 192.915 to require all personnel involved in IM programs to meet minimum professional qualification criteria."

### Summary of Advisory

PHMSA's advisory asserts that training and qualification requirements are required for all personnel "involved in the integrity management program," including operator personnel and contractors, suppliers, and vendors. Integrity management manuals should identify minimum personnel qualification criteria, verify those qualifications, and document them. Verification should be performed in accordance with an operator's quality assurance program under 49

C.F.R. Part 192.911(l). Personnel who “carry out assessments and evaluate assessment results,” includes both operators and contractor personnel, who should be qualified to perform IM-related tasks, including analysis, data integration, integrity assessments, and assessment results evaluation.

Further, qualification requirements are required for all tasks necessary to carry out integrity assessments and evaluate the results, including: (1) performing integrity assessments; (2) evaluating the results; (3) integrating any other available information or data gathered in accordance with 192.917(b) that is applicable to the covered segment being assessed; and (4) deciding on actions to be taken on these assessments. With respect to personnel who implement P&M measures, including personnel who mark and locate buried structures and directly supervise integrity assessment excavation work, PHMSA explains that this may include: management and technical personnel, risk evaluators, operators, excavation crews, welders, and pipeline safety engineers.

### Issues in Implementation

In this advisory, the Agency appears to be taking an expansive interpretation of the rules. While the rules focus on a subset of personnel involved in integrity management activities, PHMSA states that training and qualification requirements are required for *all* personnel involved in the integrity management program, including suppliers and vendors. PHMSA expressly includes data integration activities among those that require training and qualification, even though the rule targets those who conduct and evaluate the results of integrity assessments. In addition, PHMSA references management personnel within the category of personnel who implement P&M measures and must have relevant qualifications. While this advisory is directed at natural gas operators and gas transmission integrity management rules (which incorporate portions of ASME B31.8S), liquid operators should also take note of PHMSA’s advisory in light of similar Part 195 rules at 195.452(f)(8) (requiring a process for review of integrity assessment results and information analysis by a qualified person).

This advisory continues a concerning trend where PHMSA may be issuing new requirements under the guise of “guidance” and in lieu of regulation. Although such pronouncements can assist the regulated community in better understanding the Agency’s expectations, Advisory Bulletins issued by PHMSA do not have the force of law and cannot by themselves form the basis for enforcement. When agencies attempt to enforce informal guidance, courts routinely strike them down, reminding agencies that they must comply with the Administrative Procedure Act’s notice and comment rulemaking requirements. See e.g., *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1024-25 (D.C. Cir. 2000); *C.F. Communications Corp. v. FCC*, F.3d 735, 739 (D.C. Cir. 1997) (holding that the FCC “may not bypass [the APA’s notice and comment] procedure by rewriting its rules under the rubric of interpretation.”). That said, PHMSA advisories often find their way into enforcement actions, however, as part of compliance or corrective actions appended to allegations of violation of other regulations.