



# Aviation Group Client Update

Date: August 13, 2012

Contact: Lisa A. Harig, Partner  
Washington DC Office  
[lharg@mklawdc.com](mailto:lharg@mklawdc.com)  
+1 703 247 5487

## PHMSA PROPOSES AMENDMENTS TO ADMINISTRATIVE PENALTIES AND PROCEDURES

Today, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposed updates to administrative civil penalty maximums and informal hearing process for pipeline enforcement matters. In addition, PHMSA proposed to amend its criminal enforcement provisions, make corrections to the special permit provisions in the procedures for adoption of rules, and implement new enforcement authority for Part 194 oil spill response plans. According to PHMSA, the proposed amendments do not impose any new operating, maintenance, or other substantive requirements on pipeline owners or operators.

PHMSA proposed to increase the maximum administrative civil penalty for violations of the pipeline safety laws and regulations to \$200,000 per violation per day, with a maximum of \$2,000,000 for a related series of violations. The proposed maximum will apply to violations that occur or are discovered after **January 3, 2012**. The proposed amendment also removes outdated penalty provisions for violations involving offshore gathering lines and liquefied natural gas facilities.

With regard to enforcement matters, PHMSA proposed the following:

- To amend the existing definition of “presiding official.”
- To add a new section concerning the presiding official’s powers and duties.
- To provide that a respondent may arrange for a hearing to be recorded or transcribed at its own cost. An accurate copy of the recording or transcript must be submitted for the official record.
- That an agency employee involved in the investigation or prosecution of an enforcement case may not participate in the decision of that case or a factually related case, but may participate as a witness or counsel at a hearing.
- That an agency employee who prepares the decision in an enforcement case may not have served in an investigative or prosecutorial capacity in that case or any factually related case.
- That any party to an enforcement proceeding is prohibited from communicating privately with the decision maker concerning information that is material to the question to be decided.
- To define the term “expedited review” for purposes of a Corrective Action Order issued without prior notice.



Additional updates and technical corrections may be found [here](#). Comments are due on or before **September 12, 2012**. If you have any questions regarding the proposed updates or require assistance in preparation or submission of comments, please contact our office.

\* \* \* \* \*

McBreen & Kopko's Aviation Group represents air carriers, fixed base operators (FBOs), airport managers, aviation service providers, and business aircraft owners and operators on a wide range of aviation issues including regulatory matters, commercial transactions, aircraft finance matters, and bankruptcy and creditors' rights.