



# A big step toward public confidence in federally regulated pipelines: Canada's proposed financial requirements unveiled

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With the publication of the *Pipeline Financial Requirements Regulations* in Part I of the Canada Gazette on September 29, 2016, the federal government provided pipeline companies a first glimpse at the absolute liability (i.e. liability without proof of fault or negligence) regulatory regime first set out in the [Pipeline Safety Act](#), SC 2015, c. 21 (*PSA*), which amended the [National Energy Board Act](#), RSC 1985, c. N-7 (*NEBA*).

The *PSA*, which came into force on June 19, 2016, provided the National Energy Board (NEB) with jurisdiction over pipelines post-abandonment, and provided the NEB with powers to assume control of pipelines in the event of a release. The *PSA* also established a limit of liability without proof of fault or negligence of \$1 billion for pipelines carrying at least 250,000 barrels of oil per day. Determination of absolute liability limits for all other pipelines was, however, left to be prescribed by regulation.

The regulatory impact analysis statement that accompanies the proposed regulations sets out the three main objectives behind the *Pipeline Financial Requirements Regulation*:

- Support the establishment of the “no-fault” absolute liability regime for companies operating federally regulated pipelines;
- Ensure pipeline companies are adequately prepared to cover response, remediation costs, and liability claims, in the event of an unintended or uncontrolled release from their pipelines; and
- Ensure that liability and financial resource requirements for pipeline operators are commensurate with the risks associated with their respective operations.

While the *PSA* reaffirmed that federally regulated pipeline companies under the jurisdiction of the NEB have unlimited liability for unintended or uncontrolled releases that are the result of their own fault or negligence, the proposed regulation sets out a “no-fault” absolute liability limit for pipeline companies, divided by commodity types and asset class (s.2(1)).

## Liability Limits & Classes

For pipeline companies operating more than one pipeline, the following rules are proposed to determine absolute liability limits:

- For multiple, unconnected oil pipelines, the liability class is determined using the sum of capacities for each respective pipeline (*NEBA*, s. 48.12(5)(a));
- For multiple, connected oil pipelines, the liability class is determined using the highest capacity line on the system (s. 2(1)(a)-(g)); and
- For multiple pipelines carrying different commodities, the total absolute liability limit is determined using the highest applicable absolute liability limit (s. 2(3), 2(4) and 2(5)).

Oil pipelines are divided into three classes with the following absolute liability limits:

Absolute Liability Class	Details	Absolute Liability Limit
Oil class 1	Companies that are authorized to operate one or more pipelines transporting at least 250 000 barrels of oil per day (bpd).	\$1 billion
Oil class 2	Companies that are authorized to operate one or more pipelines transporting at least 50 000 bpd but fewer than 250 000 bpd of oil.	\$300 million
Oil class 3	Companies that are authorized to operate one or more oil pipelines transporting at least 1 bpd but fewer than 50 000 bpd of oil.	\$200 million

Gas pipelines are also divided into three classes with the following absolute liability limits:

Absolute Liability Class	Details	Absolute Liability Limit
Gas class 1	Companies that are authorized to operate one or more pipelines that have a risk value <sup>[1]</sup> of at least 1 000 000.	\$200 million
Gas class 2	Companies that are authorized to operate one or more pipelines that have a risk value of at least 15 000 but less than 1 000 000.	\$50 million
Gas class 3	Companies that are authorized to operate one or more pipelines that have a risk value of at least 1 but less than 15 000.	\$10 million

For commodities other than oil and gas (such as pulp, slurry, salt water, and carbon dioxide) the proposed regulation sets the following absolute liability limits:

Absolute Liability Class	Details	Absolute Liability Limit
Other commodities (i.e. other than oil or gas) class 1	Companies that are authorized to operate one or more pipelines carrying other commodities in a liquid state by land or a watercourse or in a semi-solid state across a watercourse.	\$10 million
Other commodities (i.e. other than oil or gas) class 2	Companies that are authorized to operate one or more pipelines carrying other commodities in a gaseous state by land or a watercourse, or in a semi-solid state by land.	\$5 million

### Financial Resources

The proposed regulations provide the NEB with a wide variety of financial resources that companies can use to meet the absolute liability limits, including insurance policies, escrow agreements, letters or lines of credit, pooled funds,<sup>[2]</sup> parent company guarantees, surety bonds, and cash (s. 3).

While the NEB has broad discretion over the types of financial resources needed for companies to cover the absolute liability limit, limited options are available for the “readily accessible” component, being 5% of the absolute liability limit (s. 4(1)). The “readily accessible” component must consist of a line or letter of credit, a pooled fund, or cash.

Companies may establish and participate in a pooled fund to meet all or a portion of their absolute liability limit, subject to NEB approval, (s. 5(1)), but must hold a minimum of \$250 million in “readily accessible” funds within the pooled fund (s. 5(1)(d)).

### Coming Into Force

Sections 1, 3, and 5 of the proposed regulation would come into force 10 days after their publication in the Canada Gazette Part II, as well as section 4 (only for Oil class 1 companies). This would require Oil class 1 companies to have their “readily accessible” funds ready in short order.

Sections 2 and 4 are slated to come into force one year after the proposed regulation is published in the Canada Gazette Part II, in order to give companies time to come comply with the entire absolute liability limit amount.

The full text of the publication in the Canada Gazette can be found [here](#).

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[1] “Risk values” for gas pipelines are calculated as a function of the square of the outside diameter of the pipelines (in mm) multiplied by the maximum operation pressure (in MPa) (s.2(2)). Notably, pipeline wall thickness does not appear to be a factor in the calculation of risk factors or liability limits for oil or gas lines.

[2] Companies regulated by the NEB may voluntarily participate in one or more pooled funds pursuant to section 48.14 of the *PSA*. Such funds must be located and administered in Canada, and hold a minimum balance of \$250,000,000 of “readily accessible” funds. Apart from these requirements, the exact terms of such pooled funds are not yet known, as section 5(1)(c) of the proposed regulation leaves the approval of such terms to the NEB’s discretion.

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