



Please visit our [COVID-19 Resource Center](#)

#### Dates of Interest

##### **March 2020**

27 Final Comments due on Draft [Gas FAQs](#) and [Hazardous Liquid FAQs](#)

##### **April 2020**

2-3 NGA [Spring Operations Conference](#), Saratoga, NY

6 Comments due on [PHMSA's Valve NPRM](#)

13 SGA [Introduction to Natural Gas Industry](#), Tulsa, Oklahoma (virtual workshop)

19-22 GPA [Midstream Convention](#), New Orleans, LA (no schedule change as of 3/23/2020)

##### **May 2020**

8 Comments due on [Proposed Revisions to Hazardous Liquid Pipeline Accident Form](#)

11-15 GTI [Gas Distribution Operations](#), Rosemont, IL

18-22 AGA [Operations Conference](#), Chicago, IL

20-21 SGA [DOT Compliance for Natural Gas Pipeline Operators](#), Chester, VA

# Pipeline Safety Update

## ISSUE NO. 156 – MARCH 23, 2020

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*PHMSA issues guidance in response to the Coronavirus (COVID-19) Outbreak. Status of PHMSA Rulemakings. PHMSA requests comments on proposed revisions to the hazardous liquid pipeline accident report form and instructions. PHMSA and TSA announce updated pipeline security agreement. Department of Transportation issues compliance notice regarding use of Cannabidiol (CBD) products.*

### PHMSA Issues Guidance In Response to the Coronavirus (COVID-19) Outbreak

On March 20, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a [Notice of Stay of Enforcement and Notice of Enforcement Discretion to Operators Affected by the Coronavirus \(COVID-19\) Outbreak](#) (Notice). The Notice is addressed to operators of gas pipelines, hazardous liquid pipelines, and liquefied natural gas (LNG) facilities and applies to operators faced with limited resources as a result of the President's March 13 [Declaration of a National Emergency Relating to the Novel Coronavirus Disease Outbreak](#) (National Emergency). The Notice is effective immediately until further notice or modification by PHMSA.

In addition, on March 19, PHMSA issued [Guidance to State Partners Regarding COVID-19](#) (Guidance) describing recommended actions for PHMSA's State Partners and identifying PHMSA's planned actions for State programs.

### Notice of Stay of Enforcement and Notice of Enforcement Discretion

PHMSA's Notice recognizes that, because of limited personnel resources and the need to meet operational and maintenance needs, pipeline operators may not be able to fully comply with federal pipeline safety regulations related to operator qualification (OQ), control room management (CRM), and drug testing requirements. Therefore, the Notice advises the following:

**OQ and CRM.** For PHMSA-regulated operators affected by the National Emergency, PHMSA does not intend to take enforcement action with respect to OQ and certain CRM requirements. PHMSA will consider exigent circumstances that impede an operator's ability to comply with (1) OQ regulations at 49 C.F.R. §§192.801-802, §§ 193.2707-2709, 2713-2717, and §§ 195-501-509; and (2) CRM regulations related to maximum hours-of-service and training requirements.

**Drug Testing.** For operators affected by the National Emergency, PHMSA will consider applying enforcement discretion regarding pre-employment and random drug testing requirements (49 C.F.R. § 199.105(a) & (c)). Operators are encouraged to use the flexibilities provided in the Part 199 regulations related to testing, including the ability to schedule the date, time, and location of pre-employment drug tests and the ability to perform random drug testing reasonably throughout the calendar year.

**Other Regulatory Requirements.** If operators face challenges complying with other pipeline safety regulations during the National Emergency, PHMSA will exercise enforcement discretion and intends to provide operators flexibility in maintaining normal operations while ensuring public safety and environmental protection.

State-Specific Association Meetings

**April 2020**

6-9 [GMA Pipeline Safety Seminar](#), Macon, GA

**July 2020**

27 [LA Pipeline safety Conference](#), New Orleans, LA

**Recent Van Ness Feldman COVID-19 Publications**

[UPDATED: Congressional, Federal Agency and Electric Sector Planning for Continued Operations](#) – March 21, 2020

[FERC Extends Certain Filing Deadlines and Takes Other Actions in Response to the Impacts of COVID-19](#) – March 20, 2020

[Insurance Impacts of COVID-19](#) – March 19, 2020



**Documentation Required.** Operators unable to comply with the pipeline safety regulations should maintain documentation explaining the specific requirements not met, how the non-compliance is related to COVID-19, and the alternative measures taken to ensure safety.

**Intrastate Operators:** PHMSA will not object to waivers, special permits, stays of enforcement and similar measures granted by State Authorities with respect to noncompliance by state-regulated pipeline operators as a result of COVID-19.

**Communication with Regulators.** Operators who cannot comply with regulations described in this Notice because of challenges related to COVID-19 should notify their regulators as follows:

*PHMSA-regulated operators* should contact PHMSA's Office of Pipeline Safety via email at [Pipeline-COFID-19-notices@dot.gov](mailto:Pipeline-COFID-19-notices@dot.gov)

*Intrastate operators regulated by State Authorities* should contact their State Program Manager. Contact information can be found here: <http://www.napsr.org/state-program-managers.html>.

Finally, PHMSA advises that the Notice applies only to operators faced with limited resources as a result of the National Emergency and that operators are expected to comply with other applicable federal pipeline safety regulations. Operators also are expected to act reasonably to use trained, non-impaired workers to perform operations, maintenance and control room tasks. Operators are fully responsible for safe operations and maintaining the capability to detect and respond to pipeline safety issues and respond to pipeline emergencies.

**Guidance to State Partners Regarding COVID-19**

On March 19, PHMSA issued Guidance describing recommended actions for State Partners and explaining PHMSA's planned actions for State programs.

*Recommended Actions for State Partners:* The Guidance recommends that states take the following actions:

- Identify and prioritize critical work, such as time-sensitive inspections and investigations that should not be delayed;
- Monitor the need for special permits, state waivers and stays of enforcement and follow the guidance described in PHMSA's March 20 Notice;
- Determine whether to expedite current work, conduct it remotely, or temporarily Postpone it, if an operator's employees are subject to employer-imposed travel restrictions; and
- Follow guidance and practices of the Center for Disease Control and Prevention.

*PHMSA Planned Actions for State Programs:* PHMSA will take the following actions with respect to State programs:

- Conduct State Program Evaluations remotely as much as possible;
- Reschedule field observations of State inspections if circumstances permit;
- Will not deduct points from a State's program if State program managers or inspectors cannot meet training requirements because PHMSA Training and Qualification (TQ) classes are cancelled;
- Inform States of cancelled TQ classes; Conduct grant reviews, State Damage Prevention (SDP) Enforcement Effectiveness reviews remotely to the extent possible;
- Score One-Call and SDP grants remotely;
- Will not deduct points from a State's Program Evaluation if meetings of the National Association of Pipeline Safety Representatives are cancelled or a State program manager cannot attend because of travel restrictions; and
- Take into account the reasons why inspections were cancelled and could not be rescheduled when evaluating a State program.

**Status of PHMSA Rulemakings.** The chart below shows the status of PHMSA's pending pipeline safety rulemakings as reflected in (1) the Department of Transportation's (DOT) February [Significant Rulemaking Report](#), (2) PHMSA's status [Chart](#) of legislatively mandated actions, and (3) the Office of

Management & Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) Fall 2019 Unified Agenda of Regulatory and Deregulatory Actions. The Unified Agenda appears in two principal parts, [Current Agenda Agency Regulatory Entries for Active Actions](#) and [Current Long Term Actions](#).

**Pending Final Rules**

Proceeding	DOT Estimated Publication	OIRA Estimated Publication	PHMSA's Chart
Safety of Gas Transmission Pipelines, Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments	July 24, 2020	March 2020	September 9, 2021
Safety of Gas Gathering Pipelines	July 24, 2020	June 2020	September 9, 2020
Underground Natural Gas Storage Facilities	Published February 12, 2020		

**Pending Notices of Proposed Rulemakings**

Proceeding	DOT Estimated Publication	OIRA Estimated Publication	PHMSA's Chart
Amendments to LNG Facilities	March 17, 2020	January 2020	March 17, 2020
Class Location Requirements	July 22, 2020	April 2020	Not Listed
Gas Pipeline Regulatory Reform	January 29, 2020	January 2020	Not Listed
Liquid Pipeline Regulatory Reform	Not Listed	November 2019	Not Listed
Periodic Standards Update	Not Listed	December 2019	Not Listed
Repair Criteria for Hazardous Liquid Pipelines	June 26, 2020	June 2020	Not Listed
Valve Installation and Minimum Rupture Detection Standards	Published February 6, 2020		

**Pending Advance Notices of Proposed Rulemakings**

Proceeding	DOT Estimated Publication	OIRA Estimated Publication	PHMSA's Chart
Coastal Ecological Unusually Sensitive Areas	February 20, 2020	December 2019	May 8, 2020

**Other PHMSA Updates**

PHMSA requests comments on proposed revisions to the hazardous liquid pipeline accident report form and instructions. On March 9, PHMSA issued a [Notice and Request for Comments](#), inviting comments on proposed revisions to the Accident Report Form (PHMSA F 7000-1) for Hazardous Liquid Pipeline Systems and the Form's related instructions. PHMSA is proposing to reorganize the existing questions and seeks additional information regarding numerous topics, including the following:

- Operational status
- Operator response to accidents
- NRC report numbers
- Flow control and valve closures
- Date of water crossing evaluation
- Manufacturing or installation date of failed item
- Flow reversals
- External corrosion and stray current
- Excavation damage details
- Damage prevention law exemptions
- Causes of material failure
- Additional integrity inspection data, including historical ILIs
- Contributing factors

The proposed revised form is [here](#) and the proposed revised instructions are [here](#). Comments are due May 8, 2020.

*PHMSA and TSA announce updated pipeline security agreement.* On February 26, PHMSA and the Transportation Security Administration (TSA) announced the execution of an updated [annex](#) to the 2004 Memorandum of Understanding (MOU) defining the agencies' respective authorities and responsibilities regarding pipeline safety and security. The updated annex addresses information sharing regarding incidents, security threats, and the inspection of the pipeline infrastructure that crosses the U.S. – Canada border. The updated annex also facilitates strategic planning for natural and man-made disasters and memorializes best practices for interagency engagement.

## Updates from Other Federal Agencies

*Department of Transportation issues compliance notice regarding use of Cannabidiol (CBD) products.* On February 18, the U.S. Department of Transportation (DOT) issued a [Compliance Notice](#) regarding the use of CBD products. DOT emphasizes that it is unacceptable for any safety-sensitive employee subject to DOT's drug testing regulations to use marijuana. Because the use of CBD products can result in a positive drug test, employees should exercise caution when considering use of such products.

DOT notes that the Agricultural Improvement Act of 2018 (Farm Bill) removed hemp from the definition of Marijuana under the Controlled Substances Act. The Farm Bill provides that hemp-derived products containing a concentration of up to 0.3% tetrahydrocannabinol (THC), which is the primary psychoactive component of marijuana, are not controlled substances. Products containing concentrations higher than 0.3% THC remain classified as marijuana, a Schedule I drug under the Controlled Substances Act.

In response to inquiries about whether DOT-regulated safety sensitive employees can use CBD products, DOT provides the following guidance:

- DOT requires testing for marijuana, not CBD.
- Many CBD products have misleading labels that understate the level of THC.
- DOT's Part 40 Drug and Alcohol Testing regulations (which are incorporated by reference into PHMSA's Part 199 Drug and Alcohol Testing Regulations) do not authorize the use of Schedule I drugs, including marijuana, for any reason, and CBD use is not a legitimate medical explanation for a laboratory-confirmed marijuana positive result. Therefore, a Medical Review Officer will verify a drug test confirmed as positive at the appropriate cutoffs, even if an employee claims use of only a CBD product.

## FOR MORE INFORMATION

Van Ness Feldman is a law firm that counsels clients on pipeline safety compliance, enforcement, and litigation under the Pipeline Safety Laws and Regulations and related statutes. If you are interested in additional information regarding pipeline safety matters or any PHMSA or pipeline related matter, please contact [Susan Olenchuk](#) at (202) 298-1896 or [sam@vnf.com](mailto:sam@vnf.com), [Bryn Karaus](#) at (202) 298-1821 or [bsk@vnf.com](mailto:bsk@vnf.com), or any member of the firm's [Pipeline & LNG](#) practice group.

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