



Dates of Interest

February 2021

- 2-3 [SGA DOT 192 Compliance Gas Pipeline Operators](#), Virtual Workshop
- 4 Comments due on [Midstream Processing Facilities FAQs](#)
- 16 Comments due on [Proposed Revised Forms](#)
- 24-25 [Pipeline Pigging & Integrity Management Conference](#), Virtual

March 2021

- 4 Common Ground Alliance [Conference & Expo](#), Orlando, FL
- 16-17 [Pipeline Safety Regulatory Compliance](#), Virtual

April 2021

- 5-7 [MEA Gas Ops](#), Virtual Forum
- 19-22 [GTI Gas Distribution Operations](#), Webinar
- 20-22 [API 2021 Pipeline Conference](#), Savannah, GA

May 2021

- 10-13 [Pipeline Risk Management Forum](#), Houston, TX

Pipeline Safety Update

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[Susan Olenchuk](#), [Bryn Karaus](#), [Jacob Cunningham](#), and [Marco Bracamonte](#)

President-Elect Biden announces he will nominate Pete Buttigieg as Secretary of Transportation. Congress passes legislation to reauthorize the Pipeline Safety Act, but enactment is uncertain. PHMSA releases final FAQs addressing Hazardous Liquid Pipeline Final Rule. PHMSA releases additional draft FAQ guidance for the Gas Transmission Final Rule. PHMSA Proposes to Revise Annual Report and Incident Report forms for Gas Pipelines and the Annual Report form for Underground Natural Gas Storage Facilities. Status of PHMSA Rulemakings. PHMSA extends deadline for commenting on proposed Midstream Processing Facilities FAQs. The random drug testing rate remains at 50 percent for 2021. PHMSA provided its annual report to Congress regarding compliance with statutory deadlines to provide post-inspection briefings.

President-Elect Biden Announces He Will Nominate Pete Buttigieg as Secretary of Transportation

On December 15, President-Elect Joe Biden announced that he will nominate [Pete Buttigieg](#) to be the Secretary of the Department of Transportation (DOT). Mr. Buttigieg is the former mayor of South Bend, Indiana and former 2020 presidential candidate.

Congress Passes Legislation to Reauthorize the Pipeline Safety Act, But Enactment Is Uncertain

On December 21, as part of the Consolidated Appropriations Act, 2021, Congress approved legislation reauthorizing funding for federal pipeline safety programs through Fiscal Year 2023. However, it is not clear whether President Trump will sign the bill into law. The Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (PIPES Act of 2020) would require the Pipeline and Hazardous Materials Safety Administration (PHMSA) to, among other things, issue regulations addressing (1) operating and maintenance standards for large-scale liquefied natural gas (LNG) facilities, (2) idled pipelines, (3) the safety of gas gathering pipelines, (4) minimum performance standards for methane leak detection and repair, and (5) gas distribution pipelines' emergency response plans, responses to overpressurization events, and maintenance of maps and records of critical pressure control infrastructure.

Notably, the PIPES Act of 2020 does not contain several provisions that had been under consideration, including increased federal civil penalty caps, reduced standard of proof for demonstrating criminal liability, mandated installation of remote-controlled or automatic shut-off valves for gas transmission and hazardous liquid pipelines, and authorization for a voluntary information-sharing system.

PHMSA Releases Final FAQs Addressing Hazardous Liquid Pipeline Final Rule

On November 30, PHMSA released [Frequently Asked Questions](#) (FAQs) providing guidance for implementing the requirements of the Hazardous Liquid Pipeline [Final Rule](#) that was issued on October 1, 2019. The FAQs address a number of issues including (1) the requirement to provide safety data sheets to the federal on-scene coordinator and emergency responders in the event of a product spill, (2) idled pipelines, (3) integrity assessments on pipelines not subject to PHMSA's integrity management (IM) regulations, (4) leak detection, (5) pipeline inspections after extreme weather and natural disasters, (6) verification of pipeline segments subject IM, and (7) assessment of underwater pipelines.

**Recent Van Ness Feldman
Publications**

[Congress Clears Major Year-End
Legislative Package Including
Federal Spending, COVID-19 Relief,
and other Measures](#) – December 22,
2020

[Native Affairs Quarterly – Winter
2020](#) - December 17, 2020

[Hydro Newsletter – Volume 7, Issue
12](#) – November 30, 2020

The FAQs are not legally enforceable, but PHMSA stated that an operator that demonstrates compliance with them is likely to be able to demonstrate regulatory compliance. By contrast, PHMSA stated that an operator who adopts different courses of action will need to be able to demonstrate that its conduct is compliant with PHMSA's regulations.

PHMSA Releases Additional Draft FAQ Guidance for the Gas Transmission Final Rule

On December 22, PHMSA released a [Draft Second Batch of FAQs for the Gas Transmission Final Rule](#) proposing supplemental regulatory guidance to help operators of gas pipelines comply with the Gas Transmission Final Rule. PHMSA states that the "Draft Batch-2 FAQs," dated November 30, contain the agency's proposed responses to additional questions that were raised by attendees at the February 27 public meeting addressing the first batch of proposed FAQs. PHMSA states that the Draft Batch-2 FAQs will be posted to a public docket for comment before they are finalized.

Topics addressed in the Draft Batch-2 FAQs include safety-related conditions, moderate consequence areas (MCAs), spike hydrostatic testing, material verification requirements, reconfirmation of maximum allowable operating pressure (MAOP), and assessment of pipeline segments outside of high consequence areas (HCAs).

PHMSA Proposes to Revise Annual Report and Incident Report Forms for Gas Pipelines and the Annual Report Form for Underground Natural Gas Storage Facilities

On December 17, PHMSA issued a [Notice and Request for Comments](#) inviting comments on proposed revisions to the following forms: (1) "Annual Report for Natural and Other Gas Transmission and Gathering Pipeline Systems" (Form PHMSA F 7100.2-1) (Gas Transmission Annual Report form); (2) "Underground Natural Gas Storage Facility Annual Report" (Form PHMSA F 7100.4-1) (Storage Annual Report Form); and (3) "Incident Report for Gas Transmission and Gathering Systems" (Form PHMSA F 7100.2) (Incident Report Form). The deadline for submitting comments to PHMSA is February 16, 2021.

PHMSA is proposing to collect data about the number of miles of gas transmission pipelines located in HCAs, categorized by the HCA determination method in § 192.903 of PHMSA's regulations and the type of risk model used. PHMSA states that this proposal responds to a recommendation issued by the National Transportation Safety Board in its January 2015 Safety Study, entitled [Integrity Management of Gas Transmission Pipelines in High Consequence Areas](#).

In addition, PHMSA proposes to collect data on the number of relief valve lifts and compressor station emergency shutdown (ESD) events that occurred during the calendar year. According to PHMSA, these events represent a deviation from normal operations and may indicate a need for changes to equipment or processes. However, PHMSA is no longer requiring that relief valve lifts and compressor station ESD events be reported as incidents when these systems function as expected.

PHMSA also states that, in January 2020, the Office of Management and Budget (OMB) approved changes to the Gas Transmission Annual Report form in conjunction with the issuance of PHMSA's Gas Transmission Final Rule in October 2019. PHMSA responds to a number of comments that industry associations submitted to OMB during its review of those changes, including the following.

- PHMSA declined to adopt the industry associations' recommendation that reporting requirements related to MCAs apply only to pipelines with MAOP that produce hoop stresses greater than or equal to 30% of Specified Minimum Yield Strength (SMYS). PHMSA stated that such data helps the agency evaluate integrity issues and informs whether new safety requirements are needed.
- Given the costs and burden associated with implementing the Gas Transmission Final Rule, PHMSA stated it will postpone the requirement that operators identify whether non-HCA and

non-MCA pipeline segments located in Class 1 and Class 2 locations have complete MAOP records. PHMSA disagreed with the industry associations' statement that assessing the completeness of such records is outside the scope of new § 192.624, explaining that this data collection requirement had been submitted to, and approved by, OMB. PHMSA reserved its right to pursue this data collection at a later time because it is part of the final rule and having complete MAOP records is critical for pipeline safety.

- PHMSA agreed to remove the requirement that an operator identify a test factor when using a pressure test as an integrity assessment method.
- PHMSA agreed that the revised Gas Transmission Annual Report form will go into effect for the 2021 reporting year, due in March 2022.

Finally, PHMSA proposed a number of clarifications and corrections to the Storage Annual Report form.

Status of PHMSA Rulemakings

The chart below shows the status of PHMSA's pending pipeline safety rulemakings. In December, OMB's Office of Information and Regulatory Affairs (OIRA) released the [Fall 2020 Unified Agenda](#) of Regulatory and Deregulatory Actions which reflects updated anticipated publication dates for a number of PHMSA's regulatory initiatives. Those changes are reflected in bold. DOT has not released a [Significant Rulemaking Report](#) since February. PHMSA's status [Chart](#) of actions mandated in the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (PIPES Act of 2016) was updated in August.

Pending Final Rules

Proceeding	DOT Estimated Publication	OIRA Estimated Publication	PHMSA's Chart
Gas Pipeline Regulatory Reform	Not Provided	December 2020	Not Listed
Liquid Pipeline Regulatory Reform	Not Listed	April 2021	Not Listed
Safety of Gas Transmission Pipelines, Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments	July 24, 2020	April 2021	November 9, 2020
Safety of Gas Gathering Pipelines	July 24, 2020	April 2021	November 9, 2020
Valve Installation and Minimum Rupture Detection Standards	Not Provided	April 2021	Not Provided

Pending Notices of Proposed Rulemakings

Proceeding	DOT Estimated Publication	OIRA Estimated Publication	PHMSA's Chart
Amendments to LNG Facilities		June 2021	
Class Location Requirements	Published October 14, 2020		
Periodic Standards Update Rule	Not Listed	December 2020	Not Listed
Periodic Standards Update II	Not Listed	April 2021	Not Listed
Repair Criteria for Hazardous Liquid Pipelines	June 26, 2020	July 2021	Not Listed



Pending Advance Notices of Proposed Rulemakings

Proceeding	DOT Estimated Publication	OIRA Estimated Publication	PHMSA's Chart
Coastal Ecological Unusually Sensitive Areas	February 20, 2020	January 2021	November 3, 2020

Other Updates from PHMSA

PHMSA extends deadline for commenting on proposed Midstream Processing Facilities FAQs. On December 16, PHMSA issued a [Notice](#) extending the deadline for submitting comments on the proposed [Midstream Processing Facilities FAQs](#) to February 4, 2021.

The random drug testing rate remains at 50 percent for 2021. On December 7, PHMSA issued a [Notice](#) that the minimum random drug testing rate for covered employees will remain at 50% during calendar year 2021. The Notice also reminds large operators (having more than 50 covered employees) that they must submit annual Drug and Alcohol Management Information System (DAMIS) reports containing drug and alcohol testing information for employees and contractors performing covered functions. The usernames and passwords required to access DAMIS and enter calendar year 2020 data will be available by early January 2021.

PHMSA provided its annual report to Congress regarding compliance with statutory deadlines to provide post-inspection briefings. On October 2, PHMSA submitted its annual report to Congress describing the number of times pipeline operators were not provided post-inspection briefings and written preliminary findings within 30 days and 90 days, respectively, of an inspection, as required under Section 7 of the PIPES Act of 2016. The report, submitted pursuant to that statute, identifies the number of times those deadlines were exceeded by PHMSA and its State partners.

FOR MORE INFORMATION

Van Ness Feldman 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, [Bryn Karaus](#) at (202) 298-1821 or bsk@vnf.com, or any member of the firm's [Pipeline & LNG](#) practice group.

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