



Dates of Interest

January 2022

- 19 [API Virtual Pipeline Facilities Integrity Workshop](#)
- 31-2/4 [GSP Pipeline Pigging and Integrity Management Conference](#), Houston, TX

February 2022

- 14 Comments due on [ICA Gas and Hazardous Liquid Pipeline Safety Program Performance Report](#)
- 22-26 [PLCA 74th Annual Convention](#), Phoenix, AZ
- 25 Comments due on [Interim Final Rule Amending USA Definition](#)

March 2022

- 1-3 [Global Excavation Safety Conference and Expo](#), Phoenix, AZ
- 13-16 [SGA Spring Gas Conference](#), Columbia, SC
- 25-30 [APCA Annual Convention](#), Scottsdale, AZ
- 29-31 [PRCI The Technology for Future and Ageing Pipelines Conference](#), Virtual

April 2022

- 4-6 [MEA Gas Ops Roundtable](#), Omaha, NE
- 4-8 [Common Ground Alliance Conference & Expo](#), Anaheim, CA
- 19-20 [NGA Spring Operations Conference](#), Saratoga Springs, NY

Pipeline Safety Update

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PHMSA Issues Interim Final Rule Regarding Unusually Sensitive Areas for the Great Lakes, Coastal Beaches, and Certain Coastal Waters

On December 27, 2021, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued an [interim final rule](#) (IFR) amending § 195.6 of the federal pipeline safety regulations to require that “certain coastal waters” (including the Great Lakes and their connecting waters) and “coastal beaches” be classified as unusually sensitive areas (USA) for the purpose of determining whether a hazardous liquid pipeline is located in, or could affect, a “high consequence area” (HCA). PHMSA estimates that as a result of the amended USA definition, an additional 2905 miles of hazardous liquid pipelines will become subject to Part 195’s integrity management (IM) regulations. In addition, the amended definition of a USA may increase regulatory requirements for submerged pipelines, cause some currently unregulated rural hazardous liquid gathering pipelines to become regulated and cause some rural low-stress hazardous liquid pipelines to become subject to IM requirements.

The new regulations become effective February 25, 2022. PHMSA also requests comments no later than February 25, 2022 on the following issues:

- (1) the definition of Great Lakes and the mapping data used to reflect the location of the Great Lakes in the National Pipeline Mapping System (NPMS);
- (2) the use of certain data sets of the Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA) to map certain coastal waters and coastal beaches in the NPMS; and
- (3) PHMSA’s assumptions regarding the mileage of currently unregulated gathering pipelines that may become regulated as a result of the IFR and the associated estimated regulatory burden and safety benefits.

The IFR implements congressional mandates of the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (PIPES Act of 2016), and the Protecting our Infrastructure of Pipeline and Enhancing Safety Act of 2020 (PIPES Act 2020). PHMSA states that, because the PIPES Act of 2020 contains clear, defined terms and requires them to be incorporated into the regulations, the amended regulation was not subject to agency discretion and advance notice and public comment was unnecessary and impracticable.

The Interim Final Rule - Amended Definition of USA (49 C.F.R. § 195.6)

An HCA is an area where a pipeline release could have significant consequences. Section 195.450 of the federal pipeline safety regulations defines an HCA to include commercially navigable waterways, highly populated areas and USAs. Section 195.6, in turn, defines a USA as “a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release.”

State-Specific Association Meetings

January 2022

- 11 OGA [Codes and Regulations Meeting](#), Virtual
- 31-2/2 Louisiana [Damage Prevention Summit](#), Baton Rouge, LA

February 2022

- 7-10 Nebraska [Pipeline Safety Seminar](#), Kearney, NE
- 23-24 MNGA [Annual Tradeshow](#), Tupelo, MS

March 2022

- 22-23 KGA [Annual Expo, Lexington](#), KY

**Recent Van Ness Feldman
Publications**

[Hydro Newsletter – Volume 9, Issue](#)

[1](#) – January 4, 2022

[Native Affairs Quarterly](#) – Fall 2021 –

December 7, 2021

[UPDATED: EPA and Army Corps Announce Latest Update to Definition of “Waters of the United States”](#) – December 7, 2021

[Hydro Newsletter – Volume 8, Issue](#)

[12](#) – December 3, 2021

[U.S. Supreme Court Relies on Established Doctrine in Interstate Groundwater Dispute](#) - December 2, 2021

The PIPES Act of 2016 required that PHMSA amend the definition of a USA to include the Great Lakes, coastal beaches and marine coastal waters, but did not define those terms. Section 120(a) of the PIPES Act of 2020 provides the definitions and directs PHMSA to incorporate them into the regulations. First, the PIPES Act of 2020 replaced the term “marine coastal waters” with the term “certain coastal waters” and defines it to mean the “territorial sea of the United States; the Great Lakes and their connecting waters; and the marine and estuarine waters of the United States up to the head of tidal influence.” The PIPES Act of 2020 also defines the term “coastal beach” as “any land between the high-and low-water marks of certain coastal waters.”

In accordance with the PIPES Act of 2020, the IFR amends § 195.6 to incorporate the terms “certain coastal waters” and “coastal beach” and their statutory definitions into § 195.6’s definition of a USA. Consequently, under the regulations, these areas are now HCAs.

The effect of the amended USA definition will be to increase the amount of hazardous liquid pipelines subject to the IM regulations. The amended definition also will affect the regulatory compliance obligations of operators of submerged hazardous liquid pipelines, rural onshore gathering pipelines and rural Category 3 low-stress gathering pipelines.

Effect on submerged hazardous liquid pipelines. Section 60109(g) of the Pipeline Safety Act requires that an operator of any underwater hazardous liquid pipeline that is located at a depth more than 150 feet below the water’s surface and located in an HCA perform an annual internal inspection and conduct assessments of the pipeline’s condition. The operator also must assess potential impacts by maritime equipment or other vessels. The amended definition of a USA could increase the amount of underwater pipeline infrastructure that is located in or could affect an HCA and, therefore, subject to these requirements.

Effect on onshore rural gathering hazardous liquid pipelines. Currently, a rural hazardous liquid gathering pipeline with an outside nominal diameter of $6\frac{5}{8}$ inches to $8\frac{5}{8}$ inches and a stress level greater than 20 percent of specified minimum yield strength (SMYS) (or a pressure of 125 psig if the stress level is not known or for non-steel pipe) is regulated if the pipeline is located within $\frac{1}{4}$ mile of a USA. Under the amended definition of a USA, additional rural gathering pipelines now could be located within $\frac{1}{4}$ mile of a USA and therefore become regulated rural gathering pipelines subject to the requirements in § 195.11. According to PHMSA, because most onshore rural gathering lines are not located near coasts and those that are located near coasts already are regulated, PHMSA estimates that only 58.5 miles of currently unregulated rural gathering lines will become regulated and that the regulatory burden for such lines will be limited. *PHMSA requests comments on this mileage estimate and the assumptions regarding the associated regulatory burden and corresponding safety benefits.*

Effect on Category 3 low-stress pipelines. A low-stress hazardous liquid pipeline is a line located in a rural area and has a maximum operating pressure corresponding to a stress level of 20 percent or less of SMYS. A low-stress pipeline located more than $\frac{1}{2}$ mile outside of a USA is considered a “category 3” pipeline and is not subject to Part 195 IM regulations. The amended definition of a USA may cause some category 3 low-stress pipelines to become subject to IM regulations because they are now within $\frac{1}{2}$ mile of a USA.

The National Pipeline Mapping System. PHMSA maps HCAs in the NPMS based on GIS data sets generated by EPA and NOAA. With respect to the Great Lakes and their connecting waters (including Lake Ontario, Lake Erie, Lake Huron, Lake St. Clair, Lake Michigan, Lake Superior, and connecting channels: St. Mary’s River, St. Clair River, Detroit River, Niagara River, and St. Lawrence River to the Canadian border), PHMSA has defined the Great Lakes based on the statutory definition at 33 U.S.C. § 1268. PHMSA selected corresponding GIS information from the NOAA U.S. State Submerged Lands data set to map the Great Lakes in the NPMS as a USA ecological resource. *PHMSA requests comments on the use of this definition of the Great Lakes and the mapping data used to represent the location of the Great Lakes in the NPMS.*

For the “certain coastal waters” and “coastal beaches” USAs, PHMSA intends to aggregate data from the EPA Clean Water Act data prepared by NOAA, the EPA Estuary Data Mapper, and the NOAA Sea Level Rise Mean Higher High Water Data to create a single USA dataset in the NPMS. *PHMSA requests comments on the use of these datasets to satisfy the requirements of the PIPES Act of 2020.*

Trade Associations File a Petition for Reconsideration and a Motion to Stay of PHMSA’s Gas Gathering Final Rule

On December 15, 2021, the American Petroleum Institute and GPA Midstream Association (jointly, the Associations) filed a [Petition for Reconsideration](#) (as [corrected](#) on December 22, 2021) (Petition) of the [Gas Gathering Final Rule](#) published by PHMSA on November 15, 2021. The Gas Gathering Final Rule amends Part 191 and Part 192 of the federal pipeline safety regulations applicable to onshore gas gathering pipelines and creates two new categories of onshore gas gathering pipelines. The Gas Gathering Final Rule (Final Rule) becomes effective May 16, 2022 and establishes multiple compliance deadlines. The Associations also filed a [Motion to Stay Final Rule for Gas Gathering Lines](#) (Motion) pending PHMSA’s resolution of the Petition. The [Pennsylvania Independent Oil & Gas Association](#) and [Marcellus Shale Coalition](#) filed letters supporting the Petition and the Motion.

Overview of Gas Gathering Final Rule

Currently, onshore gas gathering pipelines in Class 1 locations are not subject to the Part 192 pipeline safety regulations or the Part 191 reporting requirements. The Final Rule creates two new categories of gas gathering pipelines. The first category is Type R “reporting-regulated” gathering lines which are subject to Part 191 annual reporting and incident reporting requirements and are not subject to Part 192 regulations. The second category is Type C regulated onshore gathering lines which are subject to Part 191 reporting requirements and certain Part 192 regulations applicable to gas transmission pipelines. These two new categories of gas gathering pipelines are in addition to existing regulated Type A and Type B gas gathering lines.

Incidental Gathering. The Final Rule does not modify the beginning and ending points of onshore gas gathering, which are determined based on sections 2.2(a)(1)(A) through (a)(1)(D) of API Recommended Practice (RP) 80, as modified by § 192.8. The Final Rule does, however, place limits on “incidental gathering” under API RP 80 sections 2.2(a)(1)(E) and 2.2.1.2.6 under which a gathering line may extend from defined endpoints to a pipeline connection further downstream. Specifically, after May 16, 2022, if the “incidental” endpoint (*i.e.*, downstream pipeline connection) of a new, replaced, relocated or otherwise changed incidental gathering line is located 10 miles or more downstream from points identified in sections 2.2(a)(1)(A) through (a)(1)(D), then the entire incidental gathering line will be considered a transmission pipeline and subject to all applicable provisions of Part 191 and Part 192. Incidental gathering lines that exist on or before May 16, 2022 may continue to operate as a gathering line, regardless of the line’s length.

Records Documenting Beginning and Endpoints of Gathering Lines. Operators must maintain for the life of the pipeline records that document how the beginning and endpoints of all regulated gas gathering lines were determined. Such records must be established no later than **November 16, 2022**, or within 1 year of a pipeline’s installation, whichever is later. If an applicable compliance deadline is impracticable, an operator may notify PHMSA at least 90 days before the deadline and request an alternative compliance deadline. An operator may proceed with the alternative deadline if, within 90 days, PHMSA issues a no-objection letter or does not reply.

Type R Gathering Lines. Type R gathering lines are those in Class 1 or Class 2 locations that do not meet the definitions of Type A, Type B, or Type C gathering lines. Type R gathering lines are “reporting-regulated” gathering lines. Operators of Type R lines must file annual reports and incident reports, but are not required to comply with other Part 191 reporting requirements or Part 192 safety regulations. An operator of a Type R gathering line must begin filing annual reports no later than **March 15, 2023**.

Type C Gathering Lines. Type C regulated gathering lines are in Class 1 locations, have outside diameters of 8.625 inches or more, and if metallic, have a maximum allowable operating pressure (MAOP) producing a hoop stress of 20% or more of SMYS or, if the line is non-metallic or metallic with an unknown hoop stress, has an MAOP greater than 125 psig.

Operators of previously unregulated Type C gathering lines that already exist on or before May 16, 2022 must comply with certain Part 192 requirements applicable to gas transmission pipelines no later than **May 16, 2023** (subject to the operator’s ability to request an alternative compliance deadline) and will be subject to Part 191 reporting requirements. The first annual report must be submitted no later than **March 15, 2023**.

The chart below reflects the Part 191 and Part 192 regulatory requirements applicable to Type C gathering lines.

Outside Pipe Diameter	Segment <i>is not</i> located within a potential impact radius (PIR) containing a building intended for human occupancy or other impact site <i>or</i> within a class location unit containing a building intended for human occupancy or other impacted site	Segment <i>is</i> located within a potential impact radius (PIR) containing a building intended for human occupancy or other impact site <i>or</i> within a class location unit containing a building intended for human occupancy or other impacted site
8.625" – 12.75"	<p>Part 191: Reporting Requirements and OPID</p> <p>Part 192</p> <ul style="list-style-type: none"> - Design, construction, initial inspection and testing (for new, replaced, relocated, changed Type C lines):* <ul style="list-style-type: none"> Subpart B Subpart F Subpart C Subpart G Subpart D Subpart J Subpart E - Damage Prevention (§ 192.614) - Emergency Plans (§ 192.615) <p>*Does not apply to pipeline segments 40 feet or less in length replaced, relocated, or changed on a pipeline that existed on or before May 16, 2022.</p>	<p>Part 191: Reporting Requirements and OPID</p> <p>Part 192</p> <ul style="list-style-type: none"> - Design, construction, initial inspection and testing (for new, replaced, relocated, changed Type C lines):* <ul style="list-style-type: none"> Subpart B Subpart F Subpart C Subpart G Subpart D Subpart J Subpart E - Corrosion Control (Subpart I, except § 192.493) - Damage Prevention (§ 192.614) - Emergency Plans (§ 192.615) - Line Markers (§ 192.707) - Public Awareness (§ 192.616) - Leakage Surveys and Repair (§§ 192.706, 192.703(b)) <p>*Does not apply to pipeline segments 40 feet or less in length replaced, relocated, or changed on a pipeline that existed on or before May 16, 2022.</p>
Greater than 12.75" to 16"	Same as above	<p>Same as above, in addition:</p> <ul style="list-style-type: none"> - Establish MAOP under § 192.619(a) or (e) & maintain records - If pipeline contains plastic pipe, comply with Part 192 requirements applicable to plastic pipe and components
Greater than 16"	All Type C Requirements	All Type C requirements

Composite Pipe. The Final Rule defines composite materials as “materials used to make pipes or components manufactured with a combination of either steel and/or plastic and a reinforcing material to maintain their circumferential or longitudinal strength.” The Final Rule allows an operator to install or replace composite pipe not authorized under Part 192 in Type C gathering lines upon notification to PHMSA. An operator may use composite pipe or materials as proposed in the notification, if PHMSA does not object within 90 days. An operators may continue to use composite pipe installed on or before May 16, 2022 without notification to PHMSA.

Associations’ Petition for Reconsideration

The thrust of the Association’s Petition is that the risk assessment and cost-benefit analysis for the Final Rule are legally and factually insupportable. The Associations recommend several revisions to the Final Rule:

- The 10-mile limitation on incidental gathering should apply only to new incidental gathering pipelines constructed after May 16, 2022, and should not apply to incidental gathering lines that are replaced, relocated or otherwise changed after that date.
- The Part 191 reporting requirement deadlines for Type C gathering lines should be aligned with the deadline for determining the beginning and endpoints of these gathering pipelines. To avoid having to comply with reporting requirements for existing gas gathering lines before an operator has determined if lines qualify as Type C lines, the Associations propose that operators be allowed to treat all existing Class 1 gathering lines as Type R lines and use the Type R Annual Report Form until May 16, 2023 for pipelines with an outside diameter of 12.75 inches or greater, and until May 16, 2026 for pipelines with an outside diameter of less than 12.75 inches. In addition, operators should be permitted to submit annual reports with unknown fields for data that has not been collected.
- The November 16, 2022 deadline for determining if an existing onshore gas gathering line is a Type C line should be extended to May 16, 2023 for pipelines greater than 12.75 inches in diameter and May 16, 2026 for pipelines 12.75 inches or less in diameter. In addition, § 192.8(c) should be clarified to allow an operator to use the default yield strength of 24,000 psi when calculating SMYS of steel pipe.
- The May 16, 2023 deadline for existing Type C gathering lines to comply with Part 192 requirements should be extended to May 16, 2025 for lines greater than 12.75 inches in diameter, and to May 16, 2028 for pipelines 12.75 inches or less in diameter. The length of time for future Type C gathering lines to comply with Part 192 requirements should be extended from 12 months to 24 months.
- Consistent with the Final Rule preamble, PHMSA should codify excepting existing Type C gathering lines that are not required to establish MAOP from the requirement to file a safety-related condition report.
- Type C gathering lines 8.625 inches or more but less than 12.75 inches with one building intended for human occupancy or other impacted site within the PIR or class location unit should be subject only to design, construction and initial inspection and testing requirements, damage prevention and emergency response requirements. The requirement to comply with corrosion control, line marker, leakage surveys and public awareness regulations should be eliminated.
- The length of replaced, relocated or otherwise changed pipeline that is excepted from the requirement to comply with design, installation, construction, and initial inspection and testing requirements should be extended from 40 to 500 feet.
- The requirement to use leak detection equipment when conducting leakage surveys for Type C gathering lines should be eliminated.
- The definition of “building intended for human occupancy” should be eliminated because it conflicts with existing agency guidance under the class location regulations. PHMSA also should consider allowing operators to apply the cluster rule when determining if a building intended for human occupancy or other impact site is located within the class location unit.

Status of PHMSA Rulemakings

The chart below shows the status of PHMSA's pending pipeline safety rulemakings as reflected in PHMSA's December 16, 2021 [PIPES Act 2020 Web Chart](#) and the Office of Management and Budget's Office of Information and Regulatory Affairs [2021 Fall Unified Agenda](#) and [Long-Term Actions](#).

Pending Final Rules

Proceeding	PHMSA Estimated Publication	OIRA Estimated Publication
Amendments to Parts 192 and 195 to require Valve Installation and Minimum Rupture Detection Standards	March 21, 2023	November 2020
Class Location Requirements	March 21, 2023	March 2023
Direct Criminal Referrals to Department of Transportation Office of Inspector General	Not Listed	January 2022
Liquid Pipeline Regulatory Reform	Not Listed	April 2023
Periodic Standards Update Rule (2137-AF13)	Not Listed	July 2022
Safety of Gas Gathering Pipelines	Issued November 15, 2021	
Safety of Gas Transmission Pipelines: Discretionary Integrity Management Improvements	April 15, 2022	Not Listed
Unusually Sensitive Areas for the Great Lakes, Coastal Beaches, and Certain Coastal Waters	Issued December 27, 2021	

Pending Notices of Proposed Rulemakings

Proceeding	PHMSA Estimated Publication	OIRA Estimated Publication
Amendments to LNG Facilities	September 9, 2022	September 2022
Gas Pipeline Leak Detection	May 27, 2022	May 2022
Liquid Pipeline Regulatory Reform	Not Listed	April 2023
Periodic Standards Update II (2137-AF48)	Not Listed	November 2021
Pipeline Operational Status	April 14, 2023	April 2023
Repair Criteria for Hazardous Liquid Pipelines	Not Listed	September 2022
Safety of Gas Distribution Pipelines	July 5, 2022	July 2022

Other Updates from PHMSA

The random drug testing rate remains at 50 percent for 2022. On December 21, 2021, PHMSA issued a [Notice](#) that the minimum random drug testing rate for covered employees will remain at 50% during calendar year 2022. 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.

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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