



# Pipeline Safety Update

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*Senate passes bill to reauthorize the Pipeline Safety Act. Status of PHMSA Rulemakings. PHMSA corrects reporting requirements inadvertently omitted in Underground Natural Gas Storage rule. PHMSA amends Gas Transmission final rule to reflect recent clarifications. PHMSA requests nominations for individuals to serve on GPAC and LPAC. DOT announces grants to support pipeline and hazardous materials safety programs. FERC issues accounting guidance for costs associated with PHMSA compliance. GAO recommends improvements to LNG facility permitting process. Pipeline Association for Public Awareness publishes summer newsletter. Federal appeals court finds PHMSA is not required to comply with Endangered Species Act or National Environmental Policy Act when approving oil spill response plans.*

### Dates of Interest

#### **September 2020**

- 9-10 GMA [Pipeline Safety Seminar](#), Macon, GA
- 29 [Gas and Liquid Advisory Committee Member Nominations](#) due

#### **October 2020**

- 8-9 NGA [Fall Operations Conference](#), Saratoga, NY
- 12-16 API [Storage Tank Conference & Expo](#), Virtual Event

#### **November 2020**

- 10-11 API [Cybersecurity Conference for the Oil & Natural Gas Industry](#), Houston, TX and Virtually
- 17-18 AGA [Executive Leadership Safety Summit](#), Virtual Event

## Senate Passes Bill to Reauthorize Pipeline Safety Act

On August 6, the United States Senate passed by unanimous consent S.2299, the [Protecting our Infrastructure of Pipelines and Enhancing Safety \(PIPES\) Act of 2020](#) to reauthorize pipeline safety programs through FY 2023. Other reauthorization bills remain pending in the House Energy & Commerce and House Transportation & Infrastructure Committees, and the timeline for action by these committees, and for ultimate passage by the full House of Representatives is not clear. In addition, any House bill would need to be reconciled with the Senate bill before legislation can be signed by the President.

Key provisions of the PIPES Act of 2020 are described below.

### Reducing Methane Emissions

**Leak Detection and Repair:** To address methane emissions, the Pipeline and Hazardous Materials Safety Administration (PHMSA) would be required to (1) require operators of regulated gathering lines in class 2, 3 or 4 locations and operators of new and existing gas transmission pipelines and gas distribution pipelines to implement leak detection and repair programs; (2) adopt minimum performance standards consistent with commercially available advanced technologies, and require that leak detection and repair programs have the ability to identify, locate and categorize hazardous or potentially explosive leaks; and (3) require that advanced leak detection technologies include continuous pipeline monitoring (without retroactively imposing new design or installation requirements on existing facilities) and periodic surveys.

**Inspection and Maintenance Plans:** The Pipeline Safety Act (Act) would be amended to require that operators' inspection and maintenance plans comply with new leak detection and repair requirements. In addition, the Senate bill would expand the criteria PHMSA must consider when determining if a plan is adequate. PHMSA would be required to consider whether the plan will contribute to public safety, eliminate hazardous leaks and minimize natural gas releases, protect the environment, and address pipelines known to leak. The bill would require PHMSA and state regulators to review operators' plans within 2 years of enactment and at least every 5 years thereafter and require that the Comptroller General evaluate regulators' procedures in performing those reviews and issue a report and recommendations. Within 90 days thereafter, PHMSA would be required to (1) respond to the report regarding best available technologies, practices, or facility designs to prevent or minimize natural gas releases during planned repairs, replacements, or maintenance and (2) identify a timeline for updating regulations to address the Comptroller General's recommendations.

State-Specific Association Meetings

**November 2020**

30-12/02 [GMA Pipeline Safety Seminar](#), Macon, GA

**Recent Van Ness Feldman  
Publications**

[UPDATED: CEO Issues Final Rule to Modernize NEPA Regulations](#) – August 07, 2020

[Hydro Newsletter-Volume 7, Issue 8](#) – July 31, 2020

[NPS Proposes Regulatory Revisions to Improve Administration and Delivery of Visitor Services](#) - July 23, 2020

[Democrats Coalesce on Energy and Climate Message Ahead of 2020 Election](#) – July 22, 2020

[FERC Revises PURPA Regulations to Increase State Flexibility, Modify the Mandatory Purchase Obligation, and Reform the "One-Mile Rule"](#) – July 20, 2020

[Reactive Power Rate Certainty Delayed; FERC Establishes Paper Hearing Procedures](#) – July 17, 2020



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## Gas Distribution

*Distribution System Records:* Distribution operators would be required to identify, manage, and update traceable, reliable, and complete records (including maps and other drawings), that are critical to ensuring proper pressure controls, and collect and identify other records necessary to perform risk analysis on an opportunistic basis. Records would be required to be accessible to personnel responsible for construction or engineering work.

*Distribution Integrity Management Program (DIMP) Plans:* Distribution operators would be required to (1) evaluate risks associated with cast iron pipes and maximum allowable operating pressure (MAOP) exceedances on low-pressure distribution systems; (2) rank risks based on factors other than previous abnormal operating conditions, and identify mitigation measures that do not assign zero risk to low probability events unless supported by engineering analyses. Regulators would be required to review DIMP plans, emergency response plans, and O&M and emergency procedures every 5 years.

*Emergency Response Plans:* The Senate bill would require that distribution operators' emergency response procedures provide for communications with first responders, public officials, and the public as soon as practicable after confirming discovery of a gas pipeline emergency involving a release resulting in a gas-related fire, explosion, fatality, or unscheduled release and shutdown of service to a significant number of customers.

*Operations and Maintenance Manuals and Management of Change (MOC):* Distribution O&M procedures would be required to address (1) responses to over-pressurization indications and specific actions for immediately reducing pressure or shutting down portions of the system, and (2) MOC procedures for significant changes in technology, equipment, and procedures, as well as organizational changes. Qualified personnel (such as a licensed professional engineer, subject matter expert, or other employee with requisite knowledge, experience and skills on distribution systems) would be required to review and certify construction plans for accuracy, completeness, and correctness.

*Overpressure Protection:* Qualified personnel would be required to be present to monitor gas pressure and promptly shut down gas flow or control pressure during a construction project that could cause a hazardous over-pressurization at a district regulator station. Stations with a monitoring system and remote or automatic shutoff capability would be exempt.

Each district regulator station would be required to be assessed and upgraded as needed to (1) minimize the risk of a common mode of failure causing pressure to exceed MAOP; (2) monitor gas pressure, particularly near critical pressure-control equipment; and (3) ensure appropriate secondary or backup pressure-relieving or overpressure-protection safety technology (*i.e.*, a relief valve, automatic shut-off valve, or other appropriate pressure-limiting device). At regulator stations with a primary and monitor regulator, the operator must eliminate the common mode of failure or provide backup protection capable of either shutting gas flow or relieving gas to the atmosphere.

*Pipeline Safety Management Systems (SMS):* PHMSA would be required to submit a report to Congress describing distribution operators' progress in implementing SMS, the feasibility of their implementation of SMS, and recommendations for enhancing SMS implementation. Regulators also would be required to evaluate operators' SMS frameworks.

## Due Process and Enforcement

*Due Process Protections in Enforcement Proceedings:* The bill would amend the Act to allow a respondent in an enforcement or regulatory proceeding the option of requesting a public hearing before an administrative law judge appointed under section 3105 of title 5, with any resulting consent agreement, consent order, or judgment made publicly available. In addition, PHMSA would be required to make a number of specific revisions to its enforcement procedures.

*Self-Disclosure of Violations:* When establishing the amount of a civil penalty, PHMSA would be required to consider whether an operator self-disclosed and corrected the violation before PHMSA discovered it.

## Liquefied Natural Gas (LNG) Facilities

*Standards Updates:* PHMSA would be required to review and update its operating and maintenance safety standards for large-scale LNG facilities (other than peak shaving facilities) to provide for a risk-based regulatory approach consistent with specified requirements.

PHMSA also would be required to establish a Center of Excellence for LNG Safety and Training that (1) promotes and conducts education, training and technological advancements; (2) serves as an information repository on operations best practices; (3) fosters collaboration among stakeholders; and (4) promotes process safety advancements for LNG export facilities and the incorporation of risk-based principles into the operation, management, and regulatory oversight of LNG facilities.

*Project Reviews:* PHMSA would be authorized to provide a determination that a new LNG facility meets the Act's location standards if requested to do so by a federal or state authority with jurisdiction to permit or approve an LNG pipeline facility that has used the Act's location standards to locate a new LNG facility.

## Other Pipeline Safety Provisions

*Pipeline Operating Status:* The bill would amend the Act to define an idled pipeline and require that PHMSA adopt risk-based pipeline safety and inspection requirements for such pipelines.

*Consideration of Pipeline Class Location Changes:* PHMSA would be required to determine whether to publish a notice of proposed rulemaking regarding class location requirements and whether expanding pipeline integrity management beyond high consequence areas would mitigate the need for class location requirements.

*Cost Recovery and Fees for Facility Reviews:* PHMSA would be authorized to recover the costs it incurs reviewing whether a proposed LNG facility (costing at least \$2.5 billion to design and build) complies with the design and construction requirements of Part 193. The bill would require PHMSA to establish procedures for collecting such fees, which would be recovered from the applicant proposing the LNG facility.

*Protection of Employees Providing Pipeline Safety Information:* The bill would extend the Act's whistleblower protections to former employees, allow an employee to file a complaint in district court if the Secretary of Labor does not issue a final decision within 210 days after a complaint is filed, and provide that rights and remedies may not be waived.

*Interstate Drug and Alcohol Oversight:* PHMSA would be required to improve its auditing program for drug and alcohol regulations to minimize duplication.

## Regulatory Initiatives

*Regulatory Updates:* PHMSA would be required to provide an update on the status of each legislatively-mandated final rule every 30 days and notify Congress when a final rule is published.

*Prioritization of Rulemakings:* PHMSA would be required to publish the pending final rule on the regulation of gas gathering pipelines within 90 days of the date of enactment. The Comptroller General would be required to submit to Congress a study regarding the extent to which gathering pipeline operators collect geospatial and technical data, including design and material specifications.

## 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) Spring 2020 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](#). **New Information appears in Bold.**

Note that PHMSA's projected November 9, 2021 date for publishing a final rule regarding the Safety of Gas Transmission Pipelines may be a typographical error and should read November 2020. In addition, in June, PHMSA withdrew from OMB the notice of proposed rulemaking regarding amendments to regulations applicable to LNG facilities. The timetable for consideration of this rulemaking is unclear.

### Pending Final Rules

Proceeding	DOT Estimated Publication	OIRA Estimated Publication	PHMSA's Chart
Gas Pipeline Regulatory Reform	Not Listed	Not Provided	Not Listed
Liquid Pipeline Regulatory Reform	Not Listed	Not Provided	Not Listed
Safety of Gas Transmission Pipelines, Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments	July 24, 2020	October 2020	November 9, 2021 [probably should be 2020]
Safety of Gas Gathering Pipelines	July 24, 2020	October 2020	November 9, 2020
Underground Natural Gas Storage Facilities	Published February 12, 2020 Corrected July 23, 2020		
Valve Installation and Minimum Rupture Detection Standards	Not Listed	Not Provided	Not Listed

### Pending Notices of Proposed Rulemakings

Proceeding	DOT Estimated Publication	OIRA Estimated Publication	PHMSA's Chart
Amendments to LNG Facilities	Withdrawn from OMG consideration	Withdrawn from OMG consideration	TBD
Class Location Requirements	June 22, 2020	July 2020	Not Listed
Periodic Standards Update Rule	Not Listed	June 2020	Not Listed
Periodic Standards Update II	Not Listed	November 2020	Not Listed
Repair Criteria for Hazardous Liquid Pipelines	June 26, 2020	July 2020	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	June 2020	November 3, 2020

## Other PHMSA Updates

PHMSA corrects reporting requirements inadvertently omitted in *Underground Natural Gas Storage* rule. On July 23, PHMSA issued [Correcting amendments](#) to regulations that were adopted in the [Safety of Underground Natural Gas Storage Facilities](#) final rule issued in February 2020. Specifically, PHMSA amended § 191.22 (National Registry of Pipeline and LNG Operators) to re-instate two paragraphs that were unintentionally removed in the final rule when new reporting requirements for underground natural gas storage facilities were added. PHMSA's correction restores the reporting requirements for reversals

of product flow direction occurring for longer than 30 days, pipelines converted under § 192.14, and for changes in the commodity transported.

*PHMSA amends Gas Transmission final rule to reflect recent clarifications.* On July 6, PHMSA issued a [final rule](#) amending the [Gas Transmission final rule](#), issued October 1, 2019, to clarify certain recordkeeping requirements and the applicability of MAOP reconfirmation requirements. The amendments clarify that (1) the recordkeeping requirements in § 192.5(d) (requiring that an operator retain records documenting the class location of each pipeline segment) apply only to gas transmission pipelines, and (2) the MAOP reconfirmation requirements in § 192.624(a)(1) do not apply to a pipeline segment if the operator has traceable, verifiable, and complete pressure test records to establish MAOP under § 192.619(a)(2). The amendments implement clarifications that were previously granted in response to a joint Petition for Reconsideration filed by the American Gas Association, the American Petroleum Institute, the American Public Gas Association, and the Interstate Natural Gas Association of America.

*PHMSA requests nominations for individuals to serve on GPAC and LPAC.* On July 31, PHMSA issued a [notice](#) requesting nominations for individuals to serve on the Gas Pipeline Advisory Committee (GPAC) and Liquid Pipeline Advisory Committee (LPAC). The GPAC and LPAC are advisory committees mandated by the Act to review PHMSA's regulatory initiatives and determine their technical feasibility, reasonableness, cost-effectiveness, and practicability. Nominations are due September 29.

## Updates from Other Agencies

*DOT announces grants to support pipeline and hazardous materials safety programs.* On August 17, DOT [announced](#) the award of over \$97 million in grants to states, local communities, tribal entities, universities, and non-profit organizations to support pipeline and hazardous materials safety programs. The awards include \$61 million in Pipeline State Base Formula Grants to 46 states, the District of Columbia and Puerto Rico to support their pipeline safety programs. DOT also issued Underground Natural Gas Storage grants, Competitive Academic Agreement Awards, State Damage prevention Program grants, Technical Assistance grants, and One Call grants. DOT also released a [report](#) providing details of the 2020 Pipeline and Hazmat Safety Grants.

*FERC issues accounting guidance for costs associated with PHMSA compliance.* On June 23, the Federal Energy Regulatory Commission's (FERC) Chief Accountant and Director of the Division of Audits and Accounting issued [guidance](#) to all jurisdictional natural gas companies on the proper accounting of costs incurred in testing pipelines in compliance with PHMSA's Gas Transmission final rule. The accounting guidance clarifies that, if a jurisdictional entity has previously constructed a pipeline and initial or subsequent tests do not meet the requirements of a subsequently issued federal safety standard, and retesting the pipeline is necessary to utilize its full capabilities, such retesting costs can be capitalized. The accounting guidance further reminds entities that testing costs on future construction projects should be capitalized, and that pipeline testing costs incurred under a planned maintenance program should be recorded as a maintenance expense in the period incurred, consistent with the Commission's accounting regulations and precedents.

*GAO recommends improvements to LNG facility permitting process.* On August 6, the Government Accountability Office (GAO) published a report on how PHMSA, FERC, the U.S. Coast Guard (USCG), and the Maritime Administration (MARAD) collaborate during permitting processes for LNG export facilities and the extent to which regulations for such facilities incorporate current technical standards. Generally, GAO found that the agencies have incorporated most but not all of the key practices that the GAO [previously identified](#) as facilitating collaboration among federal agencies, including reviewing and updating written guidance and agreements.

GAO, however, found that FERC, PHMSA, and USCG continue to incorporate by reference into their regulations outdated technical standards, despite guidance from OMB recommending that agencies review and update the technical standards contained in their regulations every 3 to 5 years. GAO recommended, among other things, that FERC, PHMSA and the Coast Guard establish processes to conduct standards-specific reviews of their regulations every 3 to 5 years. GAO also recommended that FERC establish a process for regularly reviewing and updating its agreements with other agencies for onshore facility permitting processes.

## Updates from Industry

*Pipeline Association for Public Awareness publishes summer newsletter.* The Pipeline Association for Public Awareness has released the summer 2020 issue of its [Pipeline Awareness Newsletter](#). Topics addressed include the use of drones in pipeline safety inspections; preventing damage to underwater and underground infrastructure; and helping schools located near pipelines improve emergency planning and preparedness.

## Updates on Pipeline Litigation

*Federal appeals court finds PHMSA is not required to comply with Endangered Species Act or National Environmental Policy Act when approving oil spill response plans.* On June 5, the U.S. Court of Appeals for the Sixth Circuit issued a decision in [National Wildlife Federation v. U.S. Department of Transportation](#) holding that PHMSA is not required to comply with the Endangered Species Act (ESA) and National Environmental Policy Act (NEPA) when approving an operator's oil spill response plan. Under the Clean Water Act (CWA), operators of oil pipelines are required to submit response plans to PHMSA that address the risk of a potential oil spill. PHMSA must approve the response plan if it satisfies six criteria enumerated by the CWA. The criteria do not include any reference to either NEPA or the ESA.

After PHMSA evaluated and approved two such response plans for Enbridge Energy, L.P.'s Line 5 pipelines, the National Wildlife Federation filed suit, alleging that PHMSA violated the CWA by failing to engage in consultation under the ESA or prepare an environmental impact statement under NEPA. Reversing a lower court decision, the appeals court found that the ESA consultation requirement and NEPA's requirement for an EIS apply only to "discretionary" actions. Because the CWA requires that PHMSA approve an oil spill response plan that meets statutory criteria, ESA and NEPA did not apply.

## 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](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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