



Pipeline Safety: Overdue Statutory Mandates

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The safety of natural gas and hazardous liquid pipelines in the United States is regulated by the Pipeline and Hazardous Materials Safety Administration (PHMSA) within the Department of Transportation (DOT). For decades, Congress has reauthorized DOT's pipeline safety program in stand-alone legislation. In addition, Congress has used reauthorizations to impose on PHMSA various mandates regarding standards, studies, and other elements of pipeline safety regulation—usually in response to major pipeline accidents. The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (P.L. 112-90) and the PIPES Act of 2016 (P.L. 114-183) together included 61 such mandates. As of June 21, 2018, the agency had fulfilled 47 of these. Some in Congress are concerned that key mandates remain unfulfilled, in some cases years beyond the deadlines specified in statute.

Key Overdue Rules

Congressional oversight of PHMSA has focused on several mandated regulations (rules) with potentially significant impacts on pipeline operations nationwide.

Safety of Gas Transmission Pipelines. This rulemaking would require operators to (1) reconfirm pipeline maximum allowable operating pressure and (2) test the material strength of previously untested gas transmission pipelines in high-consequence areas (P.L. 112-90 §23(c-d)). The deadline for PHMSA to finalize these two rules was July 3, 2013. The rulemaking also would address the expansion of “integrity management” programs for gas transmission pipelines beyond high-consequence areas (P.L. 112-90 §5(f)). Integrity management provides for continual evaluation of pipeline condition; assessment of risks; inspection or testing; data analysis; and follow-up repair; as well as preventive or mitigative actions. The deadline for PHMSA to finalize the integrity management provisions was January 3, 2015. The rulemaking also would address the application of existing regulations to currently unregulated gathering lines (P.L. 112-90 §21(c)). PHMSA issued a Notice of Proposed Rulemaking incorporating these provisions, and other requirements, on June 7, 2016. However, PHMSA has since decided to split its

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efforts into three separate rulemakings to facilitate completion, although the agency has not announced dates to issue proposed or final rules.

Safety of Hazardous Liquids Pipelines. Among other requirements, this rulemaking would require leak detection systems, where practicable, for hazardous liquids (i.e., oil and refined fuel) pipelines and would set standards for leak detection capability (P.L. 112-90 §8(b)). It also would address the expansion of integrity management for liquids pipelines beyond high-consequence areas (P.L. 112-90 §5(f)). The deadlines for PHMSA to finalize these rules, respectively, were January 3, 2014, and January 3, 2015. The rulemaking also would require additional integrity assessment measures for certain underwater onshore liquids pipelines (P.L. 114-183 §25). PHMSA issued a pre-publication final rule on January 13, 2017, but withdrew it on January 24, 2017, for further review in compliance with the “Memorandum for the Heads of Executive Departments and Agencies” issued by the White House. DOT now anticipates publication of a final rule in September 2018.

Amendments to Parts 192 and 195 to Require Valve Installation and Minimum Rupture Detection Standards. This rulemaking, which refers to Title 49 of the Code of Federal Regulations, relates to the ability of pipeline operators to quickly stop the flow of a commodity (e.g., oil) in case of an unintended release by installing automatic or remote-controlled valves (P.L. 112-90 §4). It also would outline performance standards for pipeline rupture detection (P.L. 112-90 §8(b)). The deadline for PHMSA to finalize these rules was January 3, 2014. DOT anticipates issuing a proposed rule in November 2018 but has not announced a date for publishing a final rule.

Underground Natural Gas Storage Facilities. This rulemaking would set minimum federal safety standards for underground natural gas storage facilities (P.L. 114-183 §12). The deadline for PHMSA to finalize this rule was June 22, 2018. PHMSA issued an interim final rule on December 19, 2016; however, the agency temporarily suspended certain enforcement actions on June 20, 2017, and re-opened the rule to public comment on October 19, 2017. DOT anticipates publication of the final rule in September 2018.

Emergency Order Authority. This rulemaking would implement PHMSA’s new authority to issue emergency orders which would apply to all operators and/or pipeline systems to abate an imminent hazard (P.L. 114-183 §16). The deadline for PHMSA to finalize this rule was March 22, 2017. The agency issued an interim final rule on October 14, 2016, and has submitted a final rule to the Office of Management and Budget for review, but DOT has not specified a publication date.

Oversight and Agency Response

Some Members of Congress have long expressed frustration with PHMSA’s failure to fulfill its statutory obligations, arguing that it delays important new regulations, undermines public confidence in pipeline safety, and does not allow Congress to evaluate the effectiveness of prior mandates as it considers PHMSA’s next reauthorization. In 2015, a PHMSA official testified that rulemaking delays at that time did not reflect a lack of commitment but rather their complexity, the agency’s rulemaking process, and limited staff resources. A 2016 audit report by the DOT Inspector General concluded that PHMSA lacked “sufficient processes, guidance, and oversight for implementing mandates” in a timely manner. On June 21, 2018, the current PHMSA administrator testified that the agency had adequate staffing and funding for its rulemaking activities and was working to streamline the agency’s rulemaking process to accelerate finalization of the overdue rules. He stated that PHMSA would prioritize rulemaking in three areas: the safety of hazardous liquid pipelines, the safety of gas transmission and gathering pipelines, and pipeline rupture detection and automatic shutoff valves.

PHMSA’s current authorization expires at the end of fiscal year 2019. Some Members of the House Transportation and Infrastructure Committee have stated their intent to closely scrutinize PHMSA to see whether the agency fulfills its outstanding mandates by that time. If not, they have raised the possibility of

reducing the agency's funding or imposing other punitive measures in its next reauthorization. How such actions might affect PHMSA's ongoing regulatory and enforcement efforts is an open question.

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