



The PIOGA press

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President signs law reauthorizing federal pipeline safety program

On December 27, President Donald J. Trump signed the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (2020 PIPES Act) into law. Adopted as part of a broader federal spending and COVID-19 relief package, the signing of the 2020 PIPES Act represents the culmination of a multiyear effort to reauthorize the nation’s federal pipeline safety program. The prior reauthorization of the federal pipeline safety program, enacted in the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (2016 PIPES Act), expired on September 30, 2019.

The 2020 PIPES Act authorizes general funding for the Pipeline and Hazardous Materials Safety Administration’s (PHMSA) gas and hazardous liquid pipeline safety programs of \$156.4 million for fiscal year 2021, \$158.5 million for FY 2022, and \$162.7 million for FY 2023, with additional amounts authorized in each of these fiscal years from the Oil Spill Liability Trust Fund for hazardous liquid pipeline safety and the user fee program for underground gas storage facilities. The 2020 PIPES Act also prescribes specific funding amounts that PHMSA must use for certain activities, including for recruitment and retention of federal pipeline safety personnel, operational expenses, and federal grant programs.

In addition to authorizing funding levels through FY 2023, the 2020 PIPES Act contains several amendments to the federal pipeline safety laws. Some of the key changes are highlighted below.

Title I of the 2020 PIPES Act:

- Establishes a new three-year program for advancing pipeline safety technologies, testing and operational practices.
- Adds an operator’s self-disclosure to the list of factors that PHMSA must consider in assessing administrative civil penalties.
- Recognizes additional due process protections for PHMSA enforcement proceedings, including that:
 - An operator be allowed to request that

matters of fact and law be resolved in a consent agreement and consent order.

- An operator and PHMSA be permitted to convene meetings for purposes of reaching a settlement or simplification or other disposition of issues.
- The case file in an enforcement action include all pertinent agency records.
- An operator be allowed to reply to PHMSA’s post-hearing submissions and request that a hearing be held on an expedited basis.
- PHMSA carry the burden of proof, presentation, and persuasion in an enforcement proceeding.
- PHMSA issue a post-hearing recommendation not later than 30 days after the deadline for any post-hearing submission of a respondent.
- PHMSA issue an order within 120 days of the filing of a petition for reconsideration.
- An operator be allowed to ask PHMSA to issue a declaratory order to resolve issues of controversy or uncertainty.
- Requires PHMSA to notify the public of an enforcement hearing and provides that the agency will make formal hearings, as defined in 49 C.F.R. § 190.3, open to the public. Currently, PHMSA’s enforcement cases, with the exception of a hearing on an emergency order, are conducted informally and do not qualify as formal hearings.
- Directs PHMSA to post the charging and responsive documents related to an enforcement action along with the decision or order on its website. For the most part, PHMSA has already been

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- posting these materials on its website.
- Requires PHMSA to issue a final rule within two years that clarifies the applicability of the pipeline safety regulations to idle pipelines, which are defined as pipelines that have ceased normal operations and will not resume service for at least 180 days, have been isolated and purged, or contain small, non-hazardous volumes of gas.
- Directs PHMSA to issue a final rule within three years updating the federal safety standards for the operation and maintenance of large-scale liquefied natural gas facilities, other than peak shaving facilities.
- Following the submission of a report to Congress and subject to the appropriation of necessary funding, authorizes PHMSA to create the National Center of Excellence for Liquefied Natural Gas Safety.
- Requires PHMSA to issue a final rule within 90 days establishing new minimum federal safety standards for onshore gas gathering lines.
- Orders PHMSA to issue new leak detection and repair program rules within one year for operators of regulated gas gathering lines, gas transmission lines and gas distribution lines.
- Requires each operator to amend its operation and maintenance plan within one year to meet the leak detection and repair program requirements of 49 U.S.C. § 60102(q).
- Directs PHMSA to review each operator's operation and maintenance plan within two years of the act and not less than five years thereafter. This review may be included as a part of a regularly scheduled inspection.
- Requires PHMSA to make a determination on whether to advance the rulemaking proceeding for updating the class location requirements.
- Directs PHMSA to enter into an agreement with the National Academy of Sciences to complete a study within two years relating to the installation of automatic or remote-controlled shutoff valves on existing gas transmission lines in high consequence areas and existing hazardous liquids pipelines in commercially navigable waterways or unusually sensitive areas.
- Defines the terms "certain coastal waters" and "coastal beach" and requires PHMSA

to complete an outstanding rulemaking mandate for these areas from the 2016 PIPES Act within 90 days.

- Requires each hazardous liquid pipeline operator to implement procedures that assess potential impacts by maritime equipment or other vessels, including anchors, anchor chains or any other attached equipment.
- Amends the reporting obligation for safety-related condition reports to require an operator to submit the report to the secretary of transportation, the appropriate state authority and the tribe where the subject of the report occurred. If there is no state authority, the operator must submit the report to the governor of the relevant state.

Title II of the 2020 PIPES Act, also known as the Leonel Rondon Pipeline Safety Act, contains several amendments to the federal pipeline safety laws in response to a September 2018 gas distribution incident in the Merrimack Valley, Massachusetts. In particular, Title II of the 2020 PIPES Act:

- Requires PHMSA to issue regulations within two years amending the integrity management program, emergency response plan, operation and maintenance manual and pressure control recordkeeping requirements for gas distribution operators.
- Directs PHMSA to submit a report to Congress within three years on the implementation of pipeline safety management systems within the gas distribution industry.
- Orders PHMSA to issue regulations within 180 days requiring that at least one qualified agent of a gas distribution operator be present at a district regulator station or other site to monitor and prevent overpressurization during certain construction projects, unless the district regulator station has a monitoring system and the capability for remote or automatic shutoff.
- Mandates that PHMSA issue regulations within one year that require gas distribution operators to assess and upgrade district regulator stations.

The product of an agreement reached in the waning days of the current session of Congress, the 2020 PIPES Act does not contain several amendments proposed during earlier phases of the legislative process. The 2020 PIPES Act does not eliminate PHMSA's obligation to consider the costs and benefits

of changes to the pipeline safety regulations or prohibit the use of direct assessments as part of a pipeline operator's integrity management program. The act does not change the mens rea (or mental state) requirement in the criminal statute or expand the list of prohibited activities covered under the criminal provision. Nor does the act authorize the use of administrative law judges in PHMSA enforcement actions, increase the amount of civil penalties that can be imposed for violations of the pipeline safety laws or regulations, or authorize the filing of mandamus actions challenging PHMSA's failure to perform nondiscretionary duties.

The task of implementing the provisions in the 2020 PIPES Act will fall on the incoming administration of President-elect Joseph R. Biden. Having emphasized environmental issues during the 2020 campaign, including efforts to address climate change through reductions in greenhouse gas emissions, the Biden administration will have the opportunity to advance these commitments in addressing the rulemaking mandates in the 2020 PIPES Act, particularly the new leak detection and repair program requirements. The Biden administration's policy preferences and appointees for key positions will influence the implementation of the 2020 PIPES Act as well. President-elect Biden has already announced that Pete Buttigieg, the former mayor of South Bend, Indiana, will be his nominee to serve as the next secretary of the U.S. Department of Transportation, although a potential nominee for PHMSA administrator may not be announced until later this year.