



Pipeline Standards and Rulemaking Division: Current Rulemakings in Process

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Major Responsibilities

- Rulemaking management
 - Regulatory Agenda
 - Petitions for Rulemaking
 - Other recommended changes to the Pipeline Safety Regulations
 - Coordination with other Federal Agencies on regulatory matters
- State Waivers
- Special Permits
- Information collection management
- Advisory committees
- Written Interpretations
- Advisory Bulletins
- Standards Committee Management



The Reg Map

Informal Rulemaking

Step One

Initiating Events

Agency initiates for rulemaking originates from such things as:

- Agency priorities and plans
- New scientific data
- New technologies
- Accidents

Required Reviews

Statutory Mandates

Recommendations from Other Agencies/External Groups/States/Federal Advisory Committees

Lawsuits

Petitions

OMB Prompt Letters

Step Two

Determination Whether a Rule Is Needed

Administrative Procedure Act Provisions

Under the Administrative Procedure Act provisions that are included as part of the Freedom of Information Act at 5 U.S.C. 552, agencies are required to publish in the Federal Register:

- Substantive rules of general applicability
- Interpretive rules
- Statements of general policy
- Rules of procedure
- Information concerning agency organization and methods of operation

Step Three

Preparation of Proposed Rule

Proposed Rule

A notice of proposed rulemaking prepared to add, change, or delete regulatory text that contains a request for public comment.

Administrative Procedure Act Provisions

Under the Administrative Procedure Act provisions at 5 U.S.C. 553, rules may be established only after proposed rulemaking procedures (steps three through six) have been followed, unless an exemption applies. The following are exempted:

- Rules concerning agency or foreign affairs functions
- Rules concerning agency management or personnel
- Rules concerning public property, loans, grants, benefits, or contracts
- Interpretive rules
- General statements of policy
- Rules of agency organization, procedure, or practice
- Management rules for which the agency determines that public input is not warranted
- Rules published on an emergency basis

Note: Even if an exemption applies under the Administrative Procedure Act provisions, other statutory provisions or agency policy may require that proposed rulemaking procedures be followed.

Step Four

OMB Review of Proposed Rule

OMB Review Under Executive Order 12866

OMB reviews only those rulemaking actions determined to be "significant."

Independent agencies are exempt from OMB review.

Step Five

Publication of Proposed Rule

Administrative Procedure Act Provisions

The Administrative Procedure Act provisions at 5 U.S.C. 553 require proposed rules to be published in the Federal Register.

Step Six

Public Comments

Comments

Under the Administrative Procedure Act provisions of 5 U.S.C. 553, an agency must provide the public the opportunity to submit written comments for consideration by the agency.

As required by Public Law 96-510, 201 agencies must provide for submission of comments by electronic means and must make available online the comments and other materials included in the rulemaking docket under 5 U.S.C. 553 (c).

Executive Order 12866 established 60 days as the standard for the comment period.

The holding of a public hearing is discretionary, unless required by statute or agency policy.

Step Seven

Preparation of Final Rule, Interim Final Rule, or Direct Final Rule

Final Rule

A final rule adds, changes, deletes, or affirms regulatory text.

Special Types of Final Rules

Interim Final Rule

An interim final rule adds, changes, or deletes regulatory text and contains a request for comments. The substantive final rule may require change to the text of the interim final rule.

Direct Final Rule

A direct final rule adds, changes, or deletes regulatory text at a specified future time, with a day to withdraw the rule if the agency receives adverse comments within the period specified by the agency.

Step Eight

OMB Review of Final Rule, Interim Final Rule, or Direct Final Rule

OMB Review Under Executive Order 12866

OMB reviews only those rulemaking actions determined to be "significant."

Independent agencies are exempt from OMB review.

Step Nine

Publication of Final Rule, Interim Final Rule, or Direct Final Rule

Congressional Review Act (5 U.S.C. 801-808)

An agency must submit most final rules, interim final rules, and direct final rules to the House of Representatives and the General Accounting Office before they can take effect.

Major rules are subject to a delayed effective date (with certain exceptions).

Action by Congress and the President could have an impact on the rule.

Administrative Procedure Act Provisions

Under the Administrative Procedure Act provisions that are included as part of the Freedom of Information Act at 5 U.S.C. 552, agencies are required to publish final rules, interim final rules, and direct final rules in the Federal Register.

Federal Register Act (44 U.S.C. 1501-1511)

The Federal Register Act at 44 U.S.C. 1501 (implemented at 1 CFR 101) requires rules that have general applicability and significant effect to be published in the Code of Federal Regulations.

Specific Analyses for Steps Three and Seven		
Regulatory Planning and Review (E.O. 12866)		
Would the rule have a \$100 million annual impact, raise new issues, and/or have other significant impacts?	→ Yes	Prepare economic impact analysis.
Regulatory Flexibility Act (5 U.S.C. 601-612)		
Is a notice of proposed rulemaking required by law?	→ Yes	Prepare regulatory flexibility analysis.
Would the rule "have a significant economic impact on a substantial number of small entities?"	→ Yes	Prepare regulatory flexibility analysis.
<i>Note: Under limited circumstances agencies also are required for certain interpretive rules including internal revenue laws (5 U.S.C. 605, 604).</i>		
Paperwork Reduction Act (44 U.S.C. 3501-3520)		
Does the rule contain a "collection of information" (reporting, disclosure, or recordkeeping)?	→ Yes	Prepare information collection clearance request for OMB review and prepare request for public comments.
Unfunded Mandates Reform Act (2 U.S.C. Chs. 17A, 25)		
Does the rulemaking process include a proposed rule?	→ Yes	Prepare unfunded mandates analysis (unless an exclusion applies).
Does the rule include any federal mandate that may result in the expenditure of direct costs (not direct savings) by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million in any one year (or indicated annually)?	→ and Yes	Prepare unfunded mandates analysis (unless an exclusion applies).
Federalism (E.O. 13132)		
Is the rule a discretionary rule that has federalism implications and imposes substantial unamortized direct compliance costs on State and local governments?	→ Yes	Prepare federalism summary impact statement.
Does the rule have federalism implications and preempt State law?	→ Yes	Prepare federalism summary impact statement.
Indian Tribal Governments (E.O. 13175)		
Is the rule a discretionary rule that has tribal implications and imposes substantial unamortized direct compliance costs on tribal governments?	→ Yes	Prepare tribal summary impact statement.
Does the rule have tribal implications and preempt tribal law?	→ Yes	Prepare tribal summary impact statement.
National Environmental Policy Act (42 U.S.C. 4321-4347)		
Is the rule categorically excluded from review?	→ No	
Does the rule constitute a major Federal action that is likely to affect the quality of the human environment?	→ and Yes	Prepare environmental assessment or environmental impact statement, as appropriate.
National Technology Transfer and Advancement Act (15 U.S.C. 272 note)		
Does the rule contain provisions for which the use of voluntary standards is applicable?	→ Yes	Adopt voluntary consensus standards or explain why not.
Governmental Actions and Interference with Constitutionally Protected Property Rights (E.O. 12630)		
Does the rule regulate private property use for the protection of public health or safety?	→ Yes	Prepare takings analysis.
Is the rulemaking a proposed regulatory action that has taking implications (other than regulating private property for the protection of public health and safety)?	→ Yes	Prepare takings analysis.
Protection of Children from Environmental Health Risks and Safety Risks (E.O. 13045)		
Is the rulemaking a "covered regulatory action"?	→ Yes	Prepare analysis of the environmental health or safety effects on children.
Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)		
Is the rulemaking action a "significant energy action"?	→ Yes	Prepare statement of energy effects.

Using The Reg Map

The Reg Map is based on general requirements. In some cases, more stringent or less stringent requirements are imposed by statutory provisions that are agency specific or subject matter specific. Also, in some cases more stringent requirements are imposed by agency policy.

In a typical case, a rulemaking action would proceed from step one through step nine with a proposed rule and a final rule.

However, if a rulemaking action is exempt from the proposed rulemaking procedures under the Administrative Procedure Act provisions (explained under step three) or under other statutory authority, an agency may:

- promulgate a final rule omitting steps three through six, or
- promulgate an interim final rule omitting steps three through six, but providing a comment period and a final rule after step nine.

Also, if an agency determines that a rule likely would not generate adverse comment, the agency may promulgate a direct final rule, omitting steps three through six, but with duty to withdraw the rule if the agency receives adverse comments within the period specified by the agency.

Drafting Requirements for Rulemaking Documents

Regulatory Planning and Review (E.O. 12866)

Rulemaking documents must comply with the specified regulatory planning and principles of regulation.

Civil Justice Reform (E.O. 12988)

Rulemaking documents must be written in clear language designed to help reduce litigation.

Presidential Memorandum on Plain Language (63 FR 11885)

Rulemaking documents must comply with plain language principles.

Federal Register Publications

Rulemaking documents must comply with the Federal Register regulations (1 CFR 101). Additional guidance and requirements are contained in the Federal Register's Document Drafting Handbook.

Agendas for Rules Under Development or Review

Unified Regulatory Agenda

The Unified Regulatory Agenda provides information concerning agency rules under development or review.

The Unified Regulatory Agenda is published in the Federal Register in the spring and fall of each year.

Regulatory Plan

The Regulatory Plan provides the most important significant regulatory actions that the agency is planning to take.

The Regulatory Plan is published in the Unified Regulatory Agenda in the fall of each year.

Regulatory Flexibility Agenda

The Regulatory Flexibility Agenda provides information concerning any rule that an agency expects to propose or promulgate that is likely to have a significant economic impact on a substantial number of small entities.

Agency regulatory flexibility agendas are published as part of the Unified Regulatory Agenda in the spring and fall of each year.

ICF INTERNATIONAL

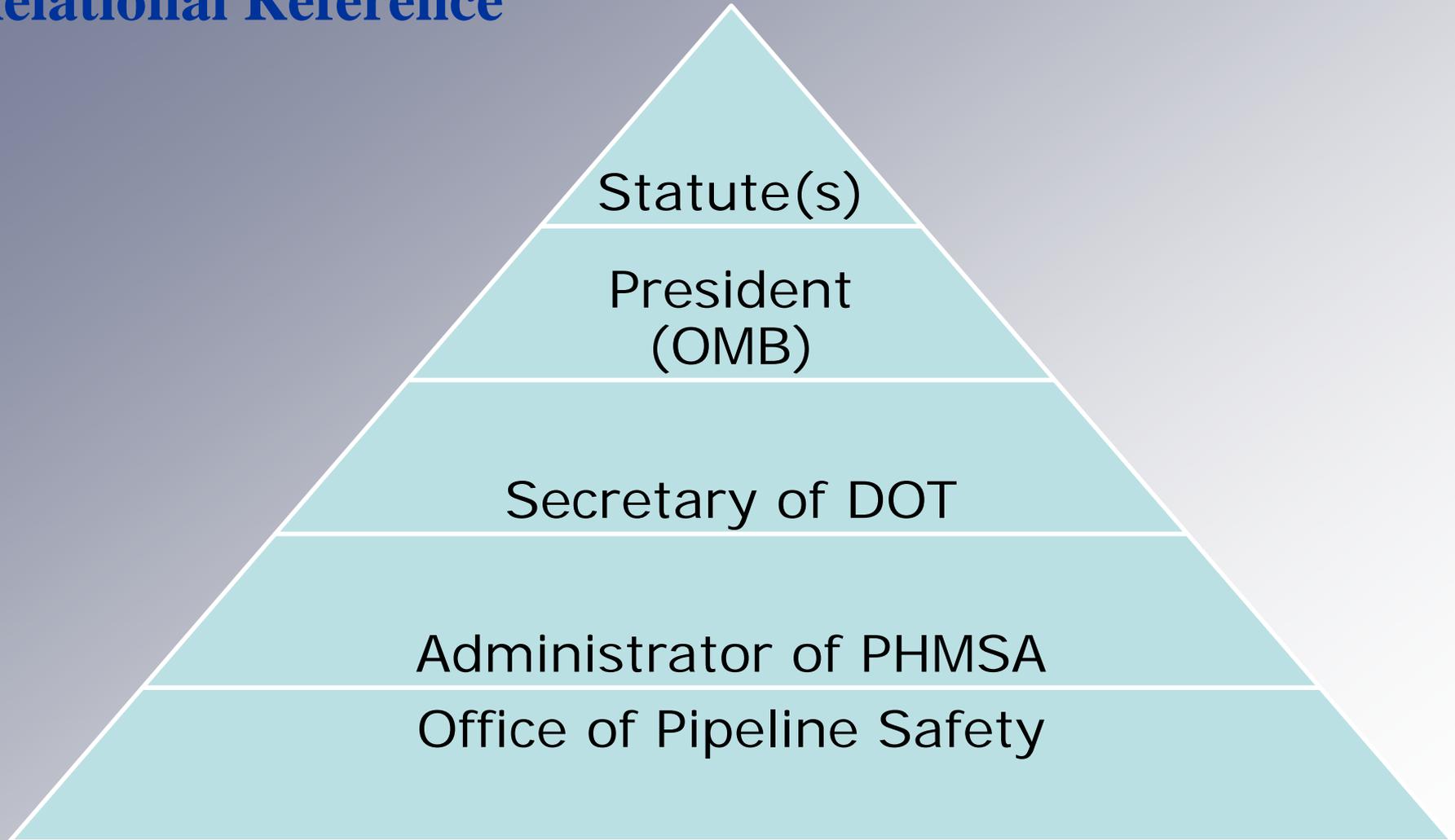
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Relational Reference





Rule Process

- **Significant vs Non-Significant Rulemakings (EO 12866)**
 - Significant Rulemaking
- Have an annual effect on the economy of \$100 million or more...
- Create a serious inconsistency or with another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.



Rule Process

- Significant rules
 - PHMSA - OST – OMB – Federal Register
 - Additional review time
- Non-Significant rules
 - PHMSA - Federal Register
- OMB Determines what rules are Significant
 - 8 of 9 PHMSA rulemakings are or expected to be designated as Significant rulemakings



Rule Process

- Where can I find information on the Status of Significant rulemakings?
 - DOT
 - Report on DOT Significant Rulemakings (Monthly reports)
 - www.dot.gov/regulations/report-on-significant-rulemakings
 - OMB
 - www.reginfo.gov



Information Collection

- OPS manages approximately 22 Information Collections which include:
 - Renewals (3 year cycles)
 - Revisions
 - New Information Collections
 - Deletions (obsolete information collections per regs change or consolidation)
 - Rulemakings

- Examples include:
 - Annual/Incident/Accident Reports
 - Recordkeeping requirements
 - NPMS
 - Grant Request Submissions



Current Rulemakings in Process

Safety of On-Shore Hazardous Liquid Pipelines (NPRM stage)

- ❑ NPRM moved past DOT (OST)
- ❑ ANPRM published 10/18/2010
- ❑ Major topics under consideration:
 - Assessments beyond High Consequence Areas (HCAs)
 - Leak detection beyond HCAs
 - Repair criteria in HCA and non-HCA areas
 - Piggability of lines
 - Reporting requirements for Gathering lines
 - Gravity Line exception



Current Rulemakings in Process

Safety of Gas Transmission and Gathering Lines (NPRM stage)

- ❑ NPRM moved past PHMSA
- ❑ ANPRM Published 8/25/2011
- ❑ Major Topics under consideration:
 - Expansion of IM requirements beyond HCA's
 - Repair criteria for both HCA and non-HCA areas
 - Assessment methods
 - Corrosion control
 - Gas gathering



Current Rulemakings in Process

Safety of Gas Transmission and Gathering Lines (Integrity Verification Process)

- Recommendations from NTSB
- Congressional mandates
- Data from revised Gas Transmission Annual Report
- Pipe of concern
 - Grandfather pipe
 - Pipe with inadequate records
 - Legacy pipe
 - Pipe tested below 1.1 MAOP



Current Rulemakings in Process

Excavation Damage Prevention (Final Rule stage)

- Final Rule moved past PHMSA
- Adv. Committee approval vote December 2012
- NPRM published 4/2/2012
- Major Topic
 - Enforce damage protection laws in States that have inadequate enforcement to protect safety. Complies with PIPE's Act 60114(f).



Current Rulemakings in Process

Miscellaneous Rulemaking (Final Rule stage)

- Final Rule moved past PHMSA
- Adv. Committee approval vote in 7/2012
- NPRM published 11/29/2011
- Major Topics
 - performance of post-construction inspections
 - leak surveys of Type B onshore gas gathering lines
 - requirements for qualifying plastic pipe joiners
 - regulation of ethanol
 - the transportation of pipe



Current Rulemakings in Process

EFV Expansion beyond Single Family Residences (NPRM stage)

- ❑ NPRM moved past DOT
- ❑ ANPRM published 11/25/2011
- ❑ *Major Topics*
 - *Rule will propose to require EFVs for:*
 - *branched service lines serving more than one single family residence*
 - *multi-family residential dwellings*
 - *commercial buildings*



Current Rulemakings in Process

Standards Update (Final Rule stage)

- ❑ NPRM published 8/16/2013 – PAC votes 12/2013 & 2/2014
 - Addresses the set of IBR standards throughout PHMSA's part 192, Part 193 and Part 195 code with updated revisions of standards from all standard organization bodies.
 - This NPRM would impact 22 of the 60+ standards that we currently IBR.
 - Per recent statute (Section 24, revised) all IBR standards pertaining to PSR must be available for free to the public. (Most SDOs comply)
 - Non-significant rulemaking action



Standards and Pipeline Safety

- ❑ Currently Incorporate by Reference 60+ standards into our regulations
- ❑ We have representation on many of the committees that develop the standards
- ❑ About every two – three years we update the standards we IBR
- ❑ We do not always adopt new revisions, if we disagree with a new standard we will not adopt it



SEC. 24. LIMITATION ON INCORPORATION OF DOCUMENTS BY REFERENCE

“Beginning 1 year after the date of enactment of this subsection, the Secretary may not issue guidance or a regulation pursuant to this chapter that incorporates by reference any documents or portions thereof unless the documents or portions thereof are made available to the public, free of charge, on an Internet Web site.”



Implementing Section 24

- Section 24 of the “Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011” added a limitation on documents incorporated by reference - After [January 3, 2013] **January 3, 2015**
 - The Secretary may not issue [guidance or] a regulation that incorporates by reference any documents or portions thereof unless they are made available to the public, free of charge, [on an internet Website].



Section 24

- Most SDOs currently post Standards for free
- Most standards are posted for free
- Tentative agreement with several SDOs to post for free, for rules issued after January 2013
- Continue to work to determine how, and when, we may be able to provide the “other standards” standards for free to the public



Current Rulemakings in Process

Operator Qualification, Cost Recovery and Other Pipeline Safety Proposed Changes (NPRM stage)

- ❑ NPRM moved past PHMSA
- ❑ This rule will address reauthorization issues related to:
 - Operator Qualification for new construction
 - Incident Reporting
 - Cost Recovery
 - Assessment methods for HL lines (NACE petition)
 - Renewal process for special permits
 - API 1104 and in-service welding



Current Rulemakings in Process

Plastic Pipe (NPRM stage)

- ❑ NPRM moved past PHMSA (not yet designated)
- ❑ Address the following plastic pipe topics:
 - Authorized use of PA12
 - AGA petition to raise D.F. from 0.32 to 0.40 for PE pipe
 - Enhanced Tracking and traceability
 - Miscellaneous revisions for PE and PA11 pipelines
 - Additional provisions for fittings used on plastic pipe



Current Rulemakings in Process

Rupture Detection and Valve Rule (NPRM stage)

□ This rule responds to:

Requirements of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (The Act):

- Section 4: ASV/RCV or equivalent technology be installed on newly constructed or entirely replaced natural gas and hazardous liquid transmission pipelines 2 years after the act was issued
- Section 8: Require operators of hazardous liquid pipeline facilities to use leak detection systems and establish standards for their use.
- The Act also mandated two studies of leak detection and response, one by the GAO, and one by PHMSA.
- Two NTSB Recommendations related to valves and leak detection



Current Rulemakings in Process

Rupture Detection and Valve Rule (NPRM stage)

- This rule would establish and define rupture detection and response time metrics including the integration of Automatic Shutoff Valves (ASV) and Remote Control Valve (RCV) placement as necessary, with the objective of improving overall incident response



Current Rulemakings in Process

QUESTIONS