



# Institute *for* Policy Integrity

NEW YORK UNIVERSITY SCHOOL OF LAW

May 8, 2020

To: Pipeline and Hazardous Materials Safety Administration, DOT  
Re: Pipeline Safety: Information Collection Activities (85 Fed. Reg. 13,700)  
Docket No.: PHMSA-2019-0141

The Institute for Policy Integrity at New York University School of Law (“Policy Integrity”) respectfully submits these comments to the Pipeline and Hazardous Materials Safety Administration (“PHMSA” or the “Administration”) on proposed revisions to the accident report form. Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy. Policy Integrity regularly submits comments to federal agencies on improving cost-benefit analysis, including on the rational consideration of health and environmental impacts.

Policy Integrity supports the Administration’s proposal to gather additional data from pipeline accidents, including additional details on injuries, property damages, and the “volume of product consumed by fire”<sup>1</sup> in order to assess the social costs of accidents. Section 3 of the Natural Gas Pipeline Safety Act of 1968, which PHMSA enforces, directs the Secretary of Transportation to, in prescribing pipeline safety standards, consider “relevant available pipeline safety data,” as well as “the reasonableness of any proposed standards,” and “the extent to which such standards will contribute to public safety.”<sup>2</sup> The Administration’s accident reports provide such data, which allow it to determine both reasonableness of future regulations and how those regulations affect public safety.

Executive Order 12,866 directs agencies to “assess all the costs and benefits of available regulatory alternatives,” and “propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.”<sup>3</sup> Office of Management and Budget’s Circular A-4 further advises agencies to “monetize quantitative effects whenever possible.”<sup>4</sup> By gathering additional data through the accident reports, PHMSA can enhance its cost and benefit estimates and thereby improve its assessment of regulatory alternatives. The Circular further counsels agencies to conduct additional research if there is “uncertainty” regarding an action’s effects “due to lack of

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<sup>1</sup> 85 Fed. Reg. 13,702.

<sup>2</sup> Natural Gas Pipeline Safety Act of 1968, Pub. L. 90-481 § 3(b)(1).

<sup>3</sup> Executive Order 12,866, §1(b)(6), 58 Fed. Reg. 51,735 (Oct. 4, 1993).

<sup>4</sup> OMB Circular A-4 at 27.

data.”<sup>5</sup> PHMSA’s accident reports provide the Administration with an opportunity to regularly gather up-to-date information and so resolve some of the uncertainty around key regulatory effects.

PHMSA correctly identifies damages from emissions from unintentionally combusted products as a potentially important effect of pipeline accidents, and an effect which the current accident report form obscures.<sup>6</sup> By quantifying how much product is combusted, PHMSA will be able to determine the amounts of pollution emitted. This information is both useful and necessary in various regulatory analyses that PHMSA must conduct. For example, courts have found, at least in reviewing the adequacy of environmental impact statements under the National Environmental Policy Act, that agencies must, at a minimum, quantify “reasonably foresee[able]” greenhouse gas impacts whenever possible.<sup>7</sup> The additional information from these accident reports could therefore help the Administration to fulfill its NEPA obligations. Tools to convert volume of product combusted into greenhouse gas emissions are readily available. The Administration could use, for example, the U.S. Environmental Protection Agency’s Greenhouse Gas Equivalencies Calculator<sup>8</sup> to arrive at an accurate estimate of emissions once it knows how many thousands of cubic feet or therms of natural gas were burned.

Sincerely,

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<sup>5</sup> *Id.* at 39.

<sup>6</sup> Compare PHMSA’s Current Instructions for Form F 7000-1 at 9, <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/subdoc/3231/currenthlaccidentinstructionsphmsa-f-7000-112-2015-and-beyond.pdf> (instructing that “If the product is consumed by fire inside a tank, do not include the volume consumed by fire in the spill volume,” and instead only requiring the reporting of the economic “cost of this commodity”) with PHMSA’s Redlined Form F 7000-1 at A22c, <https://www.regulations.gov/document?D=PHMSA-2019-0141-0001> (“Estimated volume of commodity consumed by fire.”).

<sup>7</sup> *Sierra Club v. Fed. Energy Regulatory Comm’n*, 867 F.3d 1357, 1374 (D.C. Cir. 2017); see also *San Juan Citizens All. v. U.S. Bureau of Land Mgmt.*, 326 F. Supp. 3d 1227, 1244 (D.N.M. 2018).

<sup>8</sup> <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>