

# Pipeline Safety Alert

## DOT Sends Pipeline Safety Bill to Congress

On June 3, 2019, the U.S. Department of Transportation (DOT) sent a [legislative proposal](#) to Congress for reauthorization of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) pipeline safety program. If enacted and signed into law, the legislation would reauthorize PHMSA's pipeline safety program for an additional four years, or through 2023.

As in previous reauthorizations, the bill includes provisions that respond to recent events—in this case, the September 13, 2018, natural gas distribution incident in Merrimack Valley, Massachusetts. Consistent with the Trump administration's broader policy agenda, the bill also includes provisions to promote innovation by supporting new technologies and enhancing pipeline safety and reliability.

The legislation addresses other areas of concern to the pipeline industry, such as requiring more timely review of technical standards and imposing additional criminal sanctions for pipeline vandalism. Finally, the bill includes rulemaking mandates that focus on items of importance to PHMSA—namely, expanding the operator qualification (OQ) program to pipeline construction and establishing regulations for inactive pipelines.

### ***How does the DOT Pipeline Safety Bill Respond to the Merrimack Valley Natural Gas Distribution Incident?***

- **Secondary or Back-Up Overpressure Protection:** Requires gas distribution pipeline operators to provide a secondary or back-up means of overpressure protection, which is capable of shutting the flow of gas or relieving gas to the atmosphere, for regulator stations serving low pressure distribution systems that use the primary and monitor regulator design.
- **Management of Change:** Permits PHMSA to require all pipeline operators to prepare and implement pipeline tie-in procedures that address management of change and active monitoring of pressures and control of gas and liquid sources.

### ***How does the DOT Pipeline Safety Bill Advance Industry Initiatives?***

- **Incentives for Exceeding Safety Standards:** Permits PHMSA to provide non-financial incentives or recognition to pipeline operators who voluntarily exceed the minimum federal pipeline safety regulations.
- **Pilot Program for Innovative Technologies:** Authorizes PHMSA to establish pilot programs to exempt from regulation, for a period of no longer than seven years, innovative technologies that achieve a safety level equivalent to, or greater than, the level of safety that would be achieved through compliance with the regulations. This section also grants PHMSA authority to revoke participation or terminate the pilot program immediately if continuation would be inconsistent with the goals and objectives of the Pipeline Safety Act.



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- **\$100,000 Property Damage Threshold:** Updates the property damage threshold for pipeline operator incident reporting requirements to \$100,000, with a requirement to adjust this threshold every two years to account for inflation. The current threshold, established in 1984, is \$50,000.
- **Pipeline Safety Requirements in Permits Issued by Other Federal Agencies:** Prohibits federal agencies other than PHMSA and the Federal Energy Regulatory Commission from imposing pipeline safety requirements in permits that are different than PHMSA's requirements.
- **Incorporating New or Updated Industry Standards by Reference Every Two Years:** Requires PHMSA to review and update currently incorporated and new industry standards every two years. If PHMSA decides not to incorporate a new or updated industry standard, PHMSA must provide an explanation.
- **Additional Criminal Violations:** Adds vandalizing, tampering with, impeding, disrupting, or inhibiting the operation of a pipeline facility, including facilities under construction, to the criminal penalties provision of the Pipeline Safety Act.

## *How does the DOT Pipeline Safety Bill Address Other PHMSA Priorities?*

- **Pipeline Construction Information Gathering Authority:** Allows PHMSA to gather relevant information on pipeline construction projects and the shutdown of pipeline construction projects.
- **Voluntary Information Sharing:** Permits PHMSA to establish a voluntary information sharing (VIS) system that would include information such as pipeline integrity risk analyses (including information from in-line inspections and dig verification data), lessons learned, and process improvements. This provision supplements the PIPES Act of 2016 which required PHMSA to convene a working group on voluntary information sharing.
- **Regulations for Inactive Pipelines:** Directs PHMSA to establish regulations for pre-commissioned, active/in-service, inactive/out-of-service, and abandoned pipelines.
- **Operator Qualification for New Construction:** Authorizes PHMSA to extend OQ requirements to new construction.
- **Records of State Inspections:** Requires state authorities to provide records of inspections or investigations to PHMSA upon request.
- **Cost Recovery for Design Reviews:** Reduces the threshold for cost recovery of design reviews including for gas or liquid pipeline projects from \$2.5 billion to \$250 million. The proposed language would also allow PHMSA to collect the fees in advance of the design review.
- **LNG Compliance Review Fee:** Requires that operators pay a fee for PHMSA's expenses in determining compliance of a liquefied natural gas facility with Part 193 in connection with an application to the Federal Energy Regulatory Commission.

## *What Questions Should Pipeline Operators Consider in Reviewing the DOT Pipeline Safety Bill?*

- What kinds of non-financial incentives should PHMSA provide to operators who voluntarily exceed minimum regulatory requirements?

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- What are the potential impacts of lowering the threshold for cost recovery of design reviews from \$2.5 billion to \$250 million? How will PHMSA calculate the costs of its design review in advance?
- Does the provision allowing immediate revocation of a pilot program for innovative technologies create due process concerns? Should pipeline operators be able to rely on these pilot programs when investing money and resources into developing and implementing innovative technologies?
- Are statutory mandates for actions PHMSA can pursue under its current statutory authority necessary? What are the potential drawbacks of mandating action that PHMSA can currently take voluntarily?



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Led by three former Pipeline and Hazardous Materials Safety Administration (PHMSA) attorneys, our Pipeline and Hazardous Materials Safety practice group counsels pipeline and midstream companies, gas utilities, terminal operators, investors, trade associations, and other stakeholders, throughout the United States. James Curry, Keith Coyle and Brianne Kurdock together have more than 25 years of experience with a multitude of pipeline safety issues. They partner with client engineering and legal personnel to address day-to-day compliance questions and develop business and regulatory strategies.