

Trump executive order puts spotlight on DOT LNG rules

On April 10, President Donald Trump signed an executive order, “Promoting Energy Infrastructure and Economic Growth.” In addition to outlining U.S. policy toward private investment in energy infrastructure and directing the U.S. Environmental Protection Agency to take certain actions to improve the permitting process under the Clean Water Act, the executive order instructs the U.S. Department of Transportation (DOT) to update the federal safety standards for liquefied natural gas (LNG) facilities.

The executive order notes that DOT originally issued those safety standards nearly four decades ago and states that the current regulations are not appropriate for “modern, large-scale liquefaction facilities[.]” Accordingly, the executive order directs DOT to finalize new LNG regulations within 13 months, or by no later than May 2020, an ambitious deadline given the complex issues involved and typical timeframe for completing the federal rulemaking process.

Why does dot regulate LNG safety?

The LNG industry has a long history in the United States. The first LNG plant went into service in West Virginia in the World War I era, and a commercial liquefaction plant in Cleveland, Ohio, went into operation in the 1940s. In 1944, the Cleveland plant experienced an LNG tank failure that led to a fatal explosion and fire and resulted in extensive property damage. The first commercial shipment of LNG by vessel occurred 15 years later, in 1959, when the Methane Pioneer sailed from Louisiana to the United Kingdom. Several large-scale LNG terminals were constructed during the late 1960s and 1970s in places like Alaska, Louisiana, Georgia, Maryland, and Massachusetts, a period that coincided with DOT’s initial efforts to establish federal safety standards for LNG facilities.

In the Natural Gas Pipeline Safety Act of 1968, Congress authorized DOT to prescribe and enforce minimum federal safety standards for gas pipeline facilities and persons engaged in the transportation of gas. Acting pursuant to the authority provided in the 1968 act, DOT promulgated interim federal safety regulations for LNG facilities in the early 1970s. The interim regulations required operators to comply with the 1972 edition of the National Fire Protection Association Standard 59A (NFPA 59A), a consensus industry standard for the production, handling and storage of LNG, as well as DOT’s

new federal safety standards for gas pipeline facilities.

After issuing the interim regulations, DOT initiated a new rulemaking proceeding to establish permanent federal safety standards for LNG facilities. DOT relied on NFPA 59A in developing those standards, including the concept of requiring an operator or governmental authority to exercise control over the activities that occur within a specified distance of an LNG facility. These distances, known as “exclusion zones,” were designed to protect the public from unsafe levels of thermal radiation and vapor gas dispersion in the event of an LNG incident. DOT proposed to require that operators calculate the dimensions of an exclusion zone using certain mathematical models and other parameters.

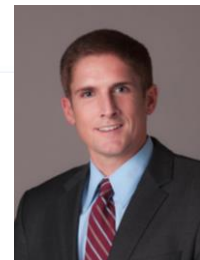
While DOT’s LNG rulemaking proceeding was still underway, Congress passed the Pipeline Safety Act of 1979. In addition to expanding DOT’s authority to regulate hazardous liquid pipeline facilities, the 1979 law included a rulemaking mandate directing DOT to finalize the new regulations for LNG facilities. DOT satisfied that mandate in August 1980 by issuing the original version of federal safety standards for LNG facilities. The regulations, codified at 49 C.F.R. Part 193, incorporated the 1979 edition of NFPA 59A by reference and included siting requirements for LNG facilities based on the exclusion-zone approach. Other provisions addressed design, construction, operation, maintenance, security and fire protection.

DOT left the original Part 193 regulations in place for the next two decades as unfavorable market conditions significantly reduced domestic interest in LNG development, particularly for large-scale terminals. In 2000, DOT responded to a rulemaking petition from NPFA by repealing many of its substantive regulations and deferring to the comparable provisions in the 1996 edition of NFPA 59A. In subsequent industry standards updates, DOT incorporated the 2001 edition and 2006 editions of NFPA 59A into Part 193. No other significant changes to the LNG regulations have occurred since DOT issued the original federal safety standards in 1980.

Why is President Trump focusing on DOT’s LNG regulations?

DOT’s LNG-related activities have increased significantly in recent years, primarily in response to the rapid growth of U.S. natural gas resources and renewed interest in domestic LNG

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projects. In the Obama administration, DOT issued several significant letters of interpretation dealing with the Part 193 siting requirements and approved the use of two alternative vapor gas dispersion models for calculating exclusion zone distances. DOT also issued a series of frequently asked questions on its website providing operators with guidance on LNG issues and created a process for reviewing design spill determinations for proposed LNG projects. In August 2018, DOT and the Federal Energy Regulatory Commission (FERC), the federal agency that exercises economic regulatory and limited safety jurisdiction over LNG terminals and facilities under the Natural Gas Act of 1938, executed a Memorandum of Understanding (MOU) to improve interagency coordination. Under the MOU, DOT is responsible for issuing a letter of determination on whether a proposed FERC-jurisdictional LNG project complies with the Part 193 regulations.

The April 10 executive order seeks to build on these recent efforts by directing DOT to update the Part 193 regulations by no later than May 2020. DOT will need to consider several important issues during the rulemaking process, such as whether to incorporate more recent additions of NFPA 59A into Part 193 by reference, whether changes should be made to the exclusion zone approach in the siting regulations and whether to address a new rulemaking mandate for small-scale LNG facilities that Congress included in the 2016 reauthorization of the Pipeline Safety Act.

Finishing the rulemaking process by the deadline provided in the executive order will be extremely difficult. DOT has not yet issued a notice of proposed rulemaking, and the proceeding is likely to generate significant public interest. Industry has made tremendous technological advances in the four decades since DOT's last comprehensive review of its LNG regulations, and public interest and other advocacy groups have also become very active in recent proceedings related to new LNG projects. These factors, when combined with the ordinary time horizon for completing DOT rulemaking proceedings and upcoming presidential election, suggest that extraordinary efforts would be needed to issue a final rule in the next 13 months.