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06/17/2019

**Safer Pipelines Act of 2019, House Draft Bill \_\_\_\_\_  
Section-by-Section Summary and PHMSA comments**

<b>Section-by-section</b>	<b>PHMSA comments</b>
<p><b><u>Sec. 1. Short title.</u></b> [Ref: DOT Bill Sec. 1]</p> <p>This section provides that the Act may be cited as the “Safer Pipelines Act of 2019.”</p>	<p>No comment</p>
<p><b><u>Sec. 2. Authorization of appropriations.</u></b> [Ref: DOT Bill Sec. 2]</p> <p>This section would provide for operating expenses for PHMSA generally and amends the authorization of appropriations for PHMSA’s pipeline programs codified in § 60125 by extending the authorization from FY 2020 through FY2023. This section also reauthorizes PHMSA’s Emergency Response Grant, Pipeline Safety Information Grants to Communities, State Damage Prevention Programs, and One-Call Notification Programs.</p>	<p>With respect to Pipeline Safety Information Grants to Communities, PHMSA notes the bill may have unintentionally removed language in 60130(c) that states “Such amounts shall not be derived from user fees collected under 60301.” This would remove the prohibition on the TAG grant being funded by user fees.</p> <p>PHMSA also notes that the bill does not include authority for a new LNG design review fee, a lower threshold for the pipeline design review fee, or a technical amendment to ensure collected funds can be used to offset costs associated with design review activities in a fiscal year other than the year of collection without further appropriation (see DOT bill sections 12, 13, and 22).</p>
<p><b><u>Sec. 3. Definitions.</u></b></p> <p>This section redefines the terms transporting gas and regulated gathering line. It adds “the movement of gas through regulated gathering lines” to the definition of “transporting gas.” It also adds rural gathering lines to the definition of “transporting hazardous liquids,” which would expand PHMSA’s regulatory authority by removing previously existing limitations on PHMSA’s authority over unregulated gathering lines. It would also add a statutory definition of “rural gathering line” based on specified minimum yield strength (SMYS), which differs from how it is currently defined based primarily on pipe diameter.</p>	<p>The basic definitions in section 60101 such as “transporting gas” are relied on by state and federal regulators and stakeholders and reflect many years of implementation through numerous rulemakings and applications.</p> <p>PHMSA has initiated proceedings to collect both incident and infrastructure data for both hazardous liquid gathering lines and gas gathering lines. In addition, PHMSA has initiated a rulemaking to address the requirements for gas gathering</p>

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	<p>lines including large diameter/high pressure gas gathering. PHMSA suggests that Congress allow these regulatory initiatives to be completed.</p>
<p><b><u>Sec. 4. Purpose and General Authority.</u></b></p> <p>This section revises section 60102 by removing from cost benefit analysis factors: the reasonableness of the standard; based on a risk assessment, the reasonably identifiable or estimated benefits expected to result from implementation or compliance with the standard; based on a risk assessment, the reasonably identifiable or estimated costs expected to result from implementation or compliance with the standard. It also removes requirements to conduct a risk assessment and present it to gas or hazardous liquid technical advisory committee.</p> <p>For safety related conditions reports, subsection (b) would replace the requirement to notify “state authorities” with “State authorities” and inserting “State officials, including local emergency responders and appropriate on-scene coordinators for any applicable contingency plans.”</p>	<p>PHMSA’s statutory cost-benefit analysis requirement at 49 U.S.C. 60102(b)(5), which requires a reasoned determination that the costs of the intended standard are justified by the benefits to the public has been in place for almost 25 years. It has contributed to the development of high-quality regulations that are effective, cost-benefit justified, and reflect sound policy.</p> <p>Striking the cost-benefit analysis is unlikely to speed the pace of rulemaking and publication of regulations because PHMSA will still be required to comply with the existing Executive Orders and DOT’s policies and procedures. PHMSA is required by EO 12866 and DOT Order 2100.6 separately require a comparison of proposed courses of action in terms of the projected economic impact of a proposed regulation. It is also a factor that courts often consider in determining if an agency action is arbitrary and capricious under the Administrative Procedures Act.</p> <p>PHMSA notes that this proposal eliminates the risk assessment requirements in sec. 60102, but does not amend the risk assessment requirements in sec. 60115(c). Section 60115(c)(2) requires the respective advisory committees to “submit to the Secretary a report on the technical feasibility, reasonableness, cost-effectiveness, and practicability of the proposed standard and include in the report recommended actions.” These provisions, while not necessary for application of the cost-benefit provisions in sec. 60102, are meant to help inform the Secretary’s decisions made under sec. 60102.</p>

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	<p>With respect to subsection (b) of the legislation, PHMSA notes that Safety Related Condition Reports are not used for purposes of incident response. Instead they provide notice to federal and state safety regulators so they can focus their periodic inspections and confirm that maintenance issues were resolved. Reporting for incident response purposes takes place through other types of required telephonic and written reporting. Congress may want to reconsider whether this subsection is necessary.</p>
<p><b><u>Sec. 5. Risk Analysis and Integrity Management Programs.</u></b></p> <p>This section amends section 60109 by:</p> <ul style="list-style-type: none"><li>• Requiring the elimination of direct assessment as a method of conducting pipeline integrity assessments within two years of enactment.</li><li>• Adding a new requirement for operators of hazardous liquid pipeline facilities located in in high consequence areas to install automatic spill detection and shut off valves.</li></ul>	<p>With regard to eliminating direct assessment, PHMSA’s current regulations require that all new and replaced pipes, valves, fittings, and other components are designed and constructed to accommodate internal inspection devices, per 49 CFR § 192.150. There are some situations where Direct Assessment is the only way to assess the integrity of the pipeline. During the rulemaking process for the rule titled “Pipeline Safety: Safety of Gas Transmission Pipelines, MAOP Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments,” PHMSA’s Gas Pipeline Advisory Committee recommended PHMSA clarify that direct assessment is allowed for the appropriate threats, but would not be allowed to be used to assess threats for which the method is not suitable.</p> <p>With respect to adding a new requirement for operators of hazardous liquid pipeline facilities located in in high consequence areas to install automatic spill detection and shut off valves, pipeline operators are already required to analyze the need for and implement risk mitigation measures which automatic valves may be a part of. In addition, the provision does not indicate</p>

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	<p>how the intervals between these devices should be determined, meaning rupture detection and automatic valves are subjects that may be better to the rulemaking process (which has commenced).</p>
<p><b><u>Sec. 6. Community right-to-know and emergency preparedness.</u></b></p> <p>This section amends section 60116, public education programs, to require that:</p> <ul style="list-style-type: none"> <li>• Pipeline operators review and modify their public education programs and submit a report to PHMSA within one year of enactment.</li> <li>• Pipeline operators establish liaison with state emergency response commissions and local emergency planning committees established under EPCRA.</li> <li>• Pipeline operators make certain information available to these organizations, including integrity management program information and maps.</li> <li>• PHMSA make safety-related condition reports and incident reports available to the public.</li> <li>• PHMSA prescribe requirements for public access to integrity management programs.</li> <li>• Pipeline operators to provide pipeline maps to each municipality in which the pipeline is located.</li> <li>• Pipeline operators to submit, and PHMSA to make public, bi-annual “Segment Reports” containing for each pipe segment operator information, pipeline and product information, state and local emergency response information, and various other information regarding testing, defects identified, leak detection systems, incident and enforcement history, and integrity management activities.</li> </ul>	<p>The requirements for pipeline operators to have public education programs and make them available for periodic review by PHMSA already exist in 49 CFR sections 102.616 and 195.440. The language proposing a review of operators’ public education programs within 1 year of reauthorization could unintentionally imply that this is a one-time review.</p> <p>Regarding the requirement to share integrity management programs with State emergency response commissions and local emergency planning committees, PHMSA does not believe that the intended safety benefit of this provision is likely to be achieved as drafted. These plans are intended for managing risks on pipelines and do not lend themselves to emergency response. If this provision is pursued, the information should be made available for viewing at secure locations.</p> <p>Regarding the availability of maps, currently, local officials can currently access gas transmission and hazardous liquid transmission pipelines in the National Pipeline Mapping System, which is submitted by operators to PHMSA annually. Therefore this requirement is duplicative.</p> <p>PHMSA currently receives much of the information proposed for pipeline segment reports. However, this information is provided by entirety of pipeline system, not pipeline segment. PHMSA believes that since pipeline segments are part of the larger pipeline, that this is already covered in PHMSA’s authority and to break down</p>

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	<p>the information by segment as proposed would be unnecessarily burdensome.</p> <p>The requirements contained in 2(A-H) overly broad and duplicative. It is impractical and inefficient for PHMSA to review a report in the format proposed since PHMSA since much, if not all, of the information is already available to PHMSA. PHMSA currently gets general information on 2(A), 2(G), 2(H), and 2(I) and parts of 2(B) and has access to 2(C)-2(F) during the normal course of inspections. If this information is required of operators, PHMSA recommends that operators maintain this information in a geospatial format.</p>
<p><b><u>Sec. 7. Actions By Private Persons.</u></b></p> <p>This section amends section 60121 to add mandamus requirements. “A person may bring a civil action in an appropriate district court of the United States to compel the Secretary to perform a nondiscretionary duty under this chapter that the Secretary has failed to perform.”</p>	<p>This amendment to the statute is unnecessary, as there already exists a legal framework by which any person adversely affected by PHMSA’s actions—or lack thereof—may seek judicial review and obtain an order directing the Agency to perform a statutory duty. Under the Administrative Procedure Act, a reviewing court may “compel agency action unlawfully withheld,” which is the same type of relief sought under mandamus. There have already been occasions when persons have sought judicial review of PHMSA actions under this provision. As such, the addition of a new mandamus clause is neither necessary nor would it speed up the pace of rulemakings.</p>
<p><b><u>Sec. 8. Civil Penalties.</u></b></p> <p>This section increases the maximum civil penalty amounts currently in section 60122. The maximum civil penalty for a related series of violations, currently \$2,000,000, is eliminated. The penalty for a person violating a standard or order under section 60103 or 60111 (both related to LNG facilities) liable for \$200,000 rather than the current \$50,000 for each violation. A person violating section 60129 (Protection of employees providing pipeline safety information), or an order issued thereunder, is liable to the Government for a civil penalty of not</p>	<p>With respect to the maximum administrative civil penalties for a related series of violations, PHMSA notes that these caps mainly apply to typical code compliance citations. For major pipeline violations involving fatalities or major environmental damage, PHMSA has the ability to refer the case to the DOJ for judicial proceedings in which these caps do not apply. In addition, civil penalties</p>

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<p>more than \$200,000 for each violation, raised from the current \$1,000.</p>	<p>are but one tool PHMSA has to ensure compliance. PHMSA has found that using corrective action orders, safety orders, and compliance orders, significantly helps ensure compliance. To illustrate, over a 10-year period the total cost to industry of compliance with the corrective action orders, safety orders, and compliance orders is estimated to have exceeded \$3.3 billion. Sometimes PHMSA’s ability to go back to a company and require them to make enterprise corrections, improvements, and repairs, dwarfs what PHMSA is able to do solely with civil penalties.</p>
<p><b><u>Sec. 9. Criminal Penalties.</u></b></p> <p>This section amends the legal standard for criminal actions from “knowingly and willfully” to “knowingly or recklessly.”</p>	<p>The current criminal standard of “knowing and willful” has not stopped DOJ from successfully pursuing pipeline prosecutions. For example, in August 2016, the U.S. Attorney for the Northern District of California won a jury verdict against Pacific Gas &amp; Electric Company on 6 felony counts arising from the 2010 San Bruno, California gas pipeline accident. Five of the felony counts were for willfully violations of the pipeline safety regulations and one was for obstructing the NTSB investigation into the accident.</p>
<p><b><u>Sec. 10. Maximum Allowable Operating Pressure.</u></b></p> <p>This section amends section 60139 to require that PHMSA promulgate requirements for operators to conduct a verification of records of the owner or operator relating to the interstate and intrastate gas transmission pipelines within two years of enactment. It removes the limitation currently in the statute for this verification to apply only to certain class location areas.</p> <p>It requires that PHMSA promulgate regulations for conducting tests to confirm the material strength of previously untested natural gas transmission pipelines operating at a pressure greater than 30 percent of specified minimum yield strength within two years of enactment. This proposal removes the limitation to pipelines operating at greater than 30% SMYS located in HCAs that is currently in the statute.</p>	<p>PHMSA notes that the effect of this change would be to eliminate the retroactive applicability prohibition for all pre-1970 gas transmission pipelines operating above 30% SMYS which could have consequences for pipeline operations. The Gas Transmission final rule, which is currently under review at OMB, as recommended by the Gas Pipeline Advisory Committee, will address these issues in a detailed and careful manner as appropriate for all four class locations.</p>

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<p>The effect of these changes is that Class 1 and 2 gas transmission pipelines that are not in an HCA would be subject to the requirements in 60139 to: (1) verify the accuracy of MAOP records and confirm the accuracy of their MAOP; (2) report to DOT those lines that the records are insufficient to confirm the accuracy of established MAOP; and (3) comply with MAOP reconfirmation process.</p> <p>It also requires that the regulations include requirements that all natural gas transmission pipelines be subjected to a hydrostatic pressure test that incorporates a spike test.</p>	
<p><b><u>Sec. 11. Direct Hire Authority for PHMSA.</u></b></p> <p>This section allows the Administrator to appoint qualified candidates to positions described in subsection (b) without regard to sections 3309 through 3319 of title 5, United States Code. Subsection (b) applies with respect to candidates for any position that would likely allow increased activities relating to pipeline safety, as determined by the Administrator. This authority ends Sept. 30, 2024.</p>	<p>No comment.</p>
<p><b><u>Sec. 12. Report.</u></b></p> <p>This section requires an annual report regarding PHMSA's efforts to hire women, minorities, and veterans as inspectors since January 1, 2012.</p>	<p>No comment.</p>