

**PIPELINE INTEGRITY, PROTECTION,
ENFORCEMENT, AND SAFETY ACT OF 2006**

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 49, UNITED STATES CODE; TABLE OF CONTENTS. This section provides that the Act may be cited as the “Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006,” references Title 49, United States Code, and provides a table of contents.

SECTION 2. PIPELINE SAFETY AND DAMAGE PREVENTION.

SECTION 2(A). ONE CALL CIVIL ENFORCEMENT.

Section 2(a) maintains the primary role for states in one-call enforcement by prohibiting PHMSA from conducting civil enforcement proceedings against excavators who violate one-call requirements in a state that has civil penalty authority unless PHMSA establishes procedures through rulemaking for determining the adequacy of a state’s one call enforcement program and makes a determination that it is inadequate.

For violations occurring in states that do not have civil penalty authority (or where a determination of inadequacy is made), this section authorizes PHMSA to conduct civil enforcement against anyone who engages in excavation activity without first using an available one-call notification system or who engages in the activity in disregard of locating and marking information established by an operator. It also authorizes civil enforcement against any excavator who damages a pipeline and does not promptly report the damage to the pipeline operator, or if there is escaping gas or hazardous liquid, does not call 911. Pipeline operators are subject to civil enforcement if they fail to respond to a location request or fail to ensure accurate marking of a pipeline in response to a request.

SECTION 2(B). STATE DAMAGE PREVENTION PROGRAMS.

Section 2(b) establishes a 100% federally funded grant program to create incentives for States to take a more comprehensive approach and improve damage prevention programs. A state is eligible for a grant if it has a program that meets the minimum standards for effectiveness or has made substantial progress towards establishing such a program. PHMSA may award grants to cover a state’s cost of the personnel, equipment, and activities to develop or carry out a damage prevention program that meets nine prescribed standards for effectiveness.

A state’s certification must also reflect that the state is encouraging and promoting the establishment of a program designed to prevent damage by excavation to the pipeline facilities to which the certification applies, including state civil enforcement that is substantially the same as Federal enforcement.

SECTION 2(C). STATE PIPELINE SAFETY GRANTS.

Section 2(c) increases the cap on matching a state's pipeline safety program costs from "not more than 50 percent" of the cost of personnel, equipment, and activities involved in the state's pipeline safety program to "not more than 80 percent" of the costs. PHMSA would implement the increase incrementally at 5 percent per year.

SECTION 2(D). MAINTENANCE OF EFFORT.

Section 2(d) updates expired language, so that a state requesting a pipeline safety program grant must ensure that the amount spent by the state for such program will at least equal the average amount spent for the 3 fiscal years prior to the fiscal year in which PHMSA makes the payment.

SECTION 2(E). DAMAGE PREVENTION TECHNOLOGY DEVELOPMENT.

Section 2(e) authorizes PHMSA to award challenge grants to promote the development of new technologies to make the one-call process and excavation job site activities more accurate and efficient.

SECTION 3. PUBLIC EDUCATION AND AWARENESS.

Section 3 authorizes \$1 million for grants to promote the 811 national excavation damage prevention phone number for the period beginning October 1, 2006 and ending September 30, 2008.

SECTION 4. LOW-STRESS PIPELINES.

Section 4 requires the issuance of regulations subjecting low-stress hazardous liquid pipelines to the pipeline safety regulations by December 31, 2007. This requirement does not apply to gathering lines. Under the Act, certain existing regulatory exemptions are retained and the application of the pipeline safety regulations to low-stress pipelines may be phased-in. In the course of this rulemaking proceeding, PHMSA intends to consider whether extending existing regulations to previously unregulated rural low pressure lines will present new engineering issues or other implementation challenges. PHMSA will also consider the potential impacts on small operators to the extent the regulations cover previously unregulated low stress pipelines operated by small entities. To the extent justified by data and comments in the rulemaking record, PHMSA intends to meet its obligation to provide the necessary and appropriate degree of regulatory flexibility to small operators such as adopting tiered implementation requirements for certain systems or longer compliance deadlines in view of unique challenges or in the interest of overall safety.

SECTION 5. TECHNICAL ASSISTANCE GRANTS.

Section 5 authorizes grants to local communities to promote local community awareness and understanding of pipeline safety activities in their area, including three \$25,000 demonstration grants.

SECTION 6. ENFORCEMENT TRANSPARENCY.

Section 6 requires PHMSA to post a monthly summary of its administrative pipeline enforcement actions for the public that includes, among other things, identification of each operator involved in an enforcement action, the types of alleged violations, and any proposed penalties. The Act also requires that operators be provided a means to make their responsive information available to the public.

SECTION 7. DIRECT SALES LINES.

Section 7 modifies the definitions of “interstate gas pipeline facility” and “intrastate gas pipeline facility” such that direct sales laterals are no longer excluded from the definition of an interstate pipeline. This will subject these lines to Federal regulation and promote consistency in enforcing the applicable safety and maintenance requirements on direct sales lines at the Federal level in the same manner as other interstate gas pipelines.

SECTION 8. PETROLEUM TRANSPORTATION CAPACITY AND REGULATORY ADEQUACY STUDY.

Section 8 requires PHMSA and DOE to perform periodic analyses of hazardous liquid pipeline transportation to identify capacity restrictions that could cause shortages of petroleum products in the event of a pipeline failure. The Act also requires the agencies to report their findings and any recommendations to Congress by June 1, 2008.

SECTION 9. DISTRIBUTION INTEGRITY MANAGEMENT PROGRAM RULEMAKING DEADLINE.

Section 9 requires PHMSA to prescribe minimum standards for integrity management programs for distribution pipelines by December 31, 2007. Gas distribution pipeline operators will be required to develop and follow a written integrity management plan that includes a risk-based evaluation of the operator’s system, identification of threats potentially affecting the system, implementation of measures to mitigate risks, and ongoing performance monitoring.

Section 9 also requires that the above-referenced distribution integrity management program regulations include a requirement for gas distribution operators to install excess flow valves (EFVs) on lines serving single-family residences installed or entirely replaced beginning on June 1, 2008 in certain circumstances. EFVs would not be required on lines that operate continuously at less than 10 pounds per square-inch, lines affected by contaminants, or where EFV installation would likely cause loss of service or interfere with operation or maintenance activities. In the course of this rulemaking proceeding, PHMSA will determine the applicability of the requirements to distribution operators. In doing so, PHMSA will consider the potential impacts on small operators such as master meter systems and liquefied petroleum gas (LPG) systems. To the extent justified by data and comments in the rulemaking record, PHMSA intends to meet its obligation to provide the necessary and appropriate degree of regulatory flexibility to operators with these or similar implementation challenges.

Finally, this section contains a savings clause that protects states that have their own requirements for excess flow valves or other integrity management requirements from Federal preemption.

SECTION 10. EMERGENCY WAIVERS.

Section 10 authorizes PHMSA to issue an emergency waiver of a pipeline safety regulation without prior notice and comment if necessary to address an emergency involving pipeline transportation. The Act maintains the existing state role in all waivers for intrastate pipelines in states having a certification. The Act does not alter the requirement that a state pipeline authority give PHMSA 60-day notice of a state waiver. In an emergency, however, PHMSA can always approve a state's waiver expeditiously rather than take the entire 60 days. *[Suggested waiver language: "waiver is effective 60 days from [DATE] or upon approval of PHMSA, whichever is sooner."]* Note that some states have their own administrative procedures in place for issuing any waiver of the state code and pipeline authorities in these states must comply with those procedures. Therefore, if a state has administrative procedures for issuing waivers but they do not contain a provision for emergencies, authority for emergency waivers must be sought at the state level in order for a state pipeline authority to issue an emergency waiver. Nothing in the Act changes this.

SECTION 11. RESTORATION OF OPERATIONS.

Section 11 clarifies that PHMSA is authorized to cooperate with other Federal and State agencies and individual pipeline operators to facilitate the restoration of pipelines that may become or have been disrupted by natural or man-made disasters.

SECTION 12. PIPELINE CONTROL ROOM MANAGEMENT.

Section 12 requires PHMSA to issue regulations requiring each operator of a gas or hazardous liquid pipeline to develop and submit a plan to reduce pipeline system risk associated with human factors, including fatigue. Each plan must include among the measures to reduce such risks a maximum limit on the hours of service for individuals employed as controllers in a pipeline control center. PHMSA views this mandate as the "people" component of risk management. PHMSA believes that pipeline safety benefits can be obtained by effectively managing all risks associated with human factors including the man-machine interface, graphical displays, alarm handling, shift schedules, and other issues in their totality. Given the vast diversity of pipeline systems, however, PHMSA does not consider a one-size-fits-all approach to be an appropriate means of addressing this issue. PHMSA believes that Congress recognized this and that the Act contemplates regulations having plan acceptance criteria for different kinds and sizes of pipeline operators as long as PHMSA determines that the plan will result in adequate safety performance by the operator.

SECTION 13. SAFETY ORDERS.

Section 13 amends the existing safety order provision by providing a standard for issuing a safety order and requiring that operators be given notice and opportunity for a hearing. Safety orders may be a useful enforcement tool for PHMSA in situations where the risk does not rise to the level of a hazardous condition requiring immediate action, but low-to-medium level risks are present that need to be addressed over the long term. The Act directs PHMSA to issue procedural regulations for issuance of safety orders by December 31, 2007.

SECTION 14. INTEGRITY PROGRAM ENFORCEMENT.

Section 14 makes a technical clarification to the gas IMP enforcement provision [at 49 U.S.C. § 60109(c)(9)(A)(iii)] for the purpose of clarifying that PHMSA may use any appropriate enforcement tool under Chapter 601 when it determines that an operator's IMP program is inadequate, including compliance orders and assessment of civil penalties.

SECTION 15. INCIDENT REPORTING.

Section 15 requires PHMSA to review its criteria for requiring the reporting of gas pipeline incidents and modify that criteria as appropriate to ensure an accurate reflection of incident trends over time. PHMSA will likely replace the present "cost of gas lost" criteria in Part 191 with a "volume of gas lost" criteria to ensure consistent reporting irrespective of gas price fluctuations. The Act requires PHMSA to complete the review and modification by December 31, 2007.

SECTION 16. SENIOR EXECUTIVE SIGNATURE OF INTEGRITY MANAGEMENT PROGRAM PERFORMANCE REPORTS.

Section 16 requires PHMSA to establish procedures by which annual or semi-annual IMP performance reports filed by pipeline operators must be certified by a senior executive officer of that organization. This will help ensure that information submitted to PHMSA is accurate and complete and that the leaders of pipeline companies are informed and accountable.

SECTION 17. COST RECOVERY FOR DESIGN REVIEWS.

Section 17 authorizes PHMSA to recover its staff costs associated with performing a design review for a proposed LNG facility project directly from the project applicant. This places the financial cost on the applicant who stands to realize the gain from the proposed project, rather than all pipeline operators sharing the expense.

SECTION 18. AUTHORIZATION OF APPROPRIATIONS.

SECTION 18(A). IN GENERAL.

Section 18(a) reauthorizes PHMSA's pipeline safety program for an additional four years through fiscal year 2010. The total amounts authorized in section 18(a) include amounts for

PHMSA's pipeline safety program, state pipeline safety program grants (including cap increases, see § 2(c)), state damage prevention program grants (§ 2(b)), damage prevention technology grants (§ 2(e)), and research programs (§ 26).

With respect to each authorization of appropriation in this Act, an explicit appropriation of funds from Congress (in the form of an appropriations bill) is necessary for each of these programs to be funded. Until Congress passes an appropriations bill, PHMSA is operating under a Continuing Resolution that temporarily funds these programs at the same levels as last year. Accordingly, PHMSA's will not see increases that correspond with the new authorization amounts in this Act until Congress passes an appropriations bill that funds the programs at the levels authorized by the Act.

SECTION 18(C). EMERGENCY RESPONSE GRANTS.

Section 18(c) authorizes \$10 million per year for grants of financial assistance to States, counties, and local governments in high consequence areas for emergency response training, including training of emergency personnel in responding to hazardous liquid and gas pipeline failures.

SECTION 18(D). ONE-CALL NOTIFICATION PROGRAMS.

Section 18(d) reauthorizes \$1 million per year for grants of financial assistance to States for one-call notification systems in 49 U.S.C. § 6107 for an additional four years.

SECTION 18(E). INSPECTOR STAFFING.

Section 18(e) authorizes a phased increase of PHMSA inspection and enforcement personnel over four years to a total of 135 by 2010. PHMSA expects that these additional positions will be fully funded in future appropriations legislation.

SECTION 19. STANDARDS TO IMPLEMENT NTSB RECOMMENDATIONS.

Section 19 requires PHMSA to issue standards by June 1, 2008 implementing three NTSB recommendations concerning the operation of supervisory control and data acquisition systems (SCADA), including: (1) use of graphics on SCADA; (2) review and audit of alarms on monitoring equipment; and (3) pipeline controller training. PHMSA may combine this effort with the human factors/controller fatigue rulemaking referenced in section 12.

SECTION 20. ACCIDENT REPORTING FORM.

Section 20 requires PHMSA to amend its forms for operators to report gas and hazardous liquid pipeline accidents in order to collect data on controller hours on duty by December 31, 2007.

SECTION 21. LEAK DETECTION TECHNOLOGY STUDY.

Section 21 requires PHMSA to study the effectiveness of leak detection systems utilized by operators of hazardous liquid pipelines and report the agency's findings to Congress by December 31, 2007.

SECTION 22. CORROSION CONTROL REGULATIONS.

Section 22 requires PHMSA to review the adequacy of the internal corrosion control regulations for hazardous liquid pipelines in 49 CFR Part 195 and to report its findings to Congress by December 31, 2007.

SECTION 23. INSPECTOR GENERAL REPORT.

Section 23 requires the DOT Inspector General to assess PHMSA's implementation of the MOU annex with DHS related to pipeline security. The IG must report its findings to Congress by December 31, 2007.

SECTION 24. TECHNICAL ASSISTANCE PROGRAM.

Section 24 authorizes PHMSA to make grants to universities to establish and develop collaborative workforce training and technical assistance programs to support current and future pipeline safety program initiatives, including development of courses related to safety and security, incident and risk management, integrity management, consequence modeling, detection of encroachment and monitoring of rights-of-way, and vulnerability assessments.

SECTION 25. [IMP REASSESSMENT INTERVAL FOR] NATURAL GAS PIPELINES.

Section 25 requires PHMSA to review the GAO report on gas integrity management reassessment intervals and recommend to Congress legislation necessary to implement the conclusions of that report. While the Act does not remove the current 7-year maximum interval, the bill does not disturb PHMSA's existing waiver authority, including the specific authority to grant waivers from the seven-year reassessment interval. Under 49 U.S.C. § 60109(c)(5), the Secretary may waive or modify the seven year reassessment requirement if the Secretary determines after notice and opportunity for a hearing that such a waiver is "not inconsistent with pipeline safety." PHMSA will consider granting such waivers where an operator can demonstrate that the subject pipeline is covered by an integrity management program that has been reviewed by PHMSA and determined to provide appropriate risk analysis and control; a baseline assessment has been completed; the data on the current condition of the pipeline is sufficient to validate its integrity; and the proposed interval is consistent with the overall risk profile of the line. Therefore, PHMSA expects to be able to accomplish the objective underlying IMP—moving to a risk-based reassessment program.

SECTION 26. CORROSION TECHNOLOGY.

Section 26 reauthorizes and enhances PHMSA's research program established in the 2002 Act to ensure pipeline integrity, including research related to improving methods and technologies for detecting and preventing internal and external corrosion. This is a cooperative program with DOE and NIST.