

INSIGHTS

Distribution Pipelines and Increased Penalties Feature in Senate Pipeline Safety Bill

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In advance of a [Senate Commerce Committee Hearing on reauthorization of the Pipeline Safety Act](#), Senators Markey, Warren, and Blumenthal announced [legislation](#) to address distribution pipelines and risks associated with the September 2018 Merrimack Valley incident. The Leonel Rondon Pipeline Safety Act of 2019, named after a man who died in the incident, would impact various aspects of distribution pipelines, including emergency response, integrity management, operation and maintenance, safety management systems, and recordkeeping. Further, for all pipeline operators the bill would increase civil penalties under the statute by a factor of 100, from \$200,000 per day to \$2 million per day and for a maximum of \$2 million to \$200 million for a related series of events. Even though the majority of the bill's provisions are limited to distribution pipelines, certain of these proposals could be expanded more broadly during the reauthorization process to apply to gathering and transmission pipelines.

In announcing the bill, Senator Markey noted that he expects that it will have bipartisan support and that his goal is to have the bill signed into law before the end of this year. In a Republican controlled Senate, however, it is unclear how this bill may change throughout Congressional reauthorization. A House bill is likely to be more broad in scope, as signaled by last week's [House Transportation and Infrastructure Committee Hearing](#), which touched on issues more broadly applicable to the entire industry such as leak detection, outstanding rulemaking mandates, risks associated with gathering pipelines, encouraging new technology and innovation, and PHMSA's cost benefit analysis for rulemakings. The Senate bill would add at least five rulemaking mandates to PHMSA's plate, an agency which has already been subject to budget cuts and currently has a dozen outstanding mandates from prior reauthorizations, the majority of which date back to 2011 and eight of which involve rulemaking.

A high level summary of the Senate bill's provisions include the following:

Specific to Distribution Pipelines

1. Strengthen Emergency Response Plans Requirements – directs PHMSA to issue regulations to require communication protocols and to notify local officials no later than 30 minutes after an emergency that includes fire, explosion, fatality, or shutdown to more than 100 customers. Public communication should be established as soon as practicable.

2. Expansion of Distribution Integrity Management Plans (DIMP) – directs PHMSA to issue regulations to require an evaluation of risk from cast iron pipes and operation of pipelines above MAOP. In addition, these rules will require that an operator’s risk evaluation of potential threats avoid risk rating of zero for low probability events unless supported by an engineering analysis.

3. Expansion of Operation and Maintenance Requirements – directs PHMSA to issue regulations to require that operators respond to over-pressure alarms and maintain management of change procedures to ensure that construction documents are accurate and complete.

4. Mandatory Safety Management Systems (SMS)- directs PHMSA to issue regulations to require that operators implement pipeline SMS systems in accordance with API RP 1173, which must be certified by PHMSA or a certified state.

5. Maps and Records – directs PHMSA to issue regulations to require (i) “traceable, reliable, complete and up-to-date” records of distribution system in each region to depict high, medium and low gas pressure systems along with other maps and drawings; (ii) covered tasks must be approved by a Professional Engineer (PE); (iii) a qualified employee on site to monitor pressure during construction, assess and upgrade regulator stations (with some exceptions); and (iv) review and upgrading as appropriate of district regulator stations to ensure no possibility for a common mode of failure and additional pressure relieving safety-technology such as a relief valve or automatic shutoff valve.

Applicable to All Pipelines

6. Increased Civil Penalties – Increase the maximum civil penalties authorized by statute for non-compliance from \$200K per day to \$2M per day and from \$2M to \$200M for a related series of events.