Pipeline Safety TRUST

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September 2, 2025

Ben Kochman, Acting Administrator
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Comment of the Pipeline Safety Trust regarding PHMSA's DFR, Pipeline Safety: Property Damage Definition for Incident Reporting on Gas Pipelines and Accidents on Hazardous Liquid Pipelines (Docket No. PHMSA-2025-0109)

Dear Mr. Kochman:

Pipeline Safety Trust,[1] a non-profit watchdog organization of the pipeline industry and its regulators, has prepared the comments below in response to the Pipeline and Hazardous Materials Safety Administration's (PHMSA's) Direct Final Rule, Pipeline Safety: Property Damage Definition for Incident Reporting on Gas Pipelines and Accidents on Hazardous Liquid Pipelines (Docket No. PHMSA-2025-0109). PST is disappointed that PHMSA has decided to amend this regulation using the DFR process, as receiving public input is essential to ensuring that its regulations are compliant with Congressional direction and in line with public expectations.

In the notice, PHMSA suggests that "upon evaluation" and for unstated reasons which are unclear to PST, that the rule is "unlikely to elicit adverse comment" as a basis for the agency's legal authority to issue this as a direct final rule while pointing to 49 U.S.C. § 60102(b)(6)(A).[2] However, 49 U.S.C. § 60102(b)(6)(A) applies in cases where "the standard is the product of a negotiated rulemaking, or other rulemaking including the adoption of industry standards," neither of which is the case in this rule, which is a substantive change to operator obligations under the pipeline safety regulations. Further, application of 49 U.S.C. § 60102(b)(6)(A) would only result in waiving the agency's requirement to consider a risk assessment regarding the reasonably identifiable or estimated benefits and costs to result from implementation or compliance with the standard.[3] Therefore, it is PST's perspective that the DFR is invalid because PHMSA has improperly cited its statutory authority in this notice and that this comment constitutes an adverse comment. PHMSA must advise the public and withdraw this direct final rule in whole or in part in accordance

[1] Pipeline Safety Trust is a nonprofit, watchdog organization dedicated to pipeline safety. We do this through education and advocacy, increasing access to information, and building partnerships with residents, safety advocates, government, and industry to promote safe communities and a healthy environment.
[2] 90 Fed. Reg. 28,050, 28,052 (July 1, 2025).
[3] 49 U.S.C. § 60102(2)(D)–(E).

with 49 C.F.R. § 190.339(e).[4] Notwithstanding PST's disagreement with PHMSA's legal analysis for this direct final rule, we offer this comment, which PST believes further constitutes an adverse comment[5] in accordance with 49 C.F.R. § 190.339. PST believes that the rule is "inappropriate" and would be "ineffective or unacceptable without a change." *Id.* at § 190.339(c).

In addition to the DFR being invalid for the reasons described above, the rule is yet another recent instance in which PHMSA has engaged in substantive rulemaking without proper notice and comment. As PST has stated in previous comments: the Administrative Procedure Act has basic requirements for when an agency wants to change its rules. If a rulemaking is "legislative" (substantive), the Act requires notice and opportunity to participate in comment. 5 U.S.C. § 553. A change such as this one, that affects how and when an operator will submit information to PHMSA (i.e. legal obligations) and the amount of data PHMSA will receive, is substantive in our view. As described below, the public's repeated comments to PHMSA on this issue also indicates that there is interest in this matter that has not been recognized by the agency and is thus likely demonstrates the need for greater rulemaking transparency.

First, PHMSA has failed to adequately describe the application and impacts of this direct final rule to pipelines transporting carbon dioxide by describing the impact of the changes to part 195 as applying to hazardous liquids with only a single, non-substantive mention of carbon dioxide. Section 195.50 clearly applies to releases of both hazardous liquid and carbon dioxide from pipeline systems. However, PHMSA's direct final rule only mentions carbon dioxide once in the direct final rule and otherwise omits this important regulated commodity in its discussion.

Second, increasing PHMSA's hazardous liquid (and presumed carbon dioxide) damage reporting threshold is inappropriate because it exacerbates a system in which the agency will be unable to effectively monitor and enforce its regulations. PHMSA can only regulate against issues that it is aware of. Unfortunately, shortcomings in PHMSA's incident reporting regulations keep the agency in the dark when certain safety-related events occur because the reporting requirements only result in reporting if certain thresholds or criteria are met.

As a consequence, many large and potentially dangerous safety-related events are not reported to PHMSA because the accident reporting criteria were not met. This means that

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[4] PST notes that this is the second comment that it has submitted on dockets that PHMSA characterized in this way. In addition, PHMSA has noticed several other actions that PST believes is without in observance of procedure required by law, per the Administrative Procedure Act. PHMSA has noticed dozens of actions, many of which answer to the industry's demands, including the industry group for which the current Acting Administrator was recently employed. PST is concerned about these actions and questions whether PHMSA is effectively regulating the pipeline industry or merely bending to its will.

[5] 49 C.F.R. § 190.339(c) ("For purposes of this section, an adverse comment is one which explains why the rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.").

that PHMSA's safety data likely underrepresents safety-related event prevalence and that the opportunity for the public, academia, industry, and other interested stakeholders to use these safety events, which would be reported as accidents without this rulemaking, as a learning opportunity or to monitor safety trends, is lost. The rulemaking effectively moves the threshold of what safety-related events are reported to PHMSA, and therefore available to the public, and puts them behind closed doors at the operators, where not even PHMSA can ensure that safety requirements are being met.

Until recently, the property damage thresholds for reporting incidents and accidents to PHMSA was $50,000 for both gas, hazardous liquid, and carbon dioxide pipelines. However, in 2021, PHMSA issued final rule, as part of a customary rulemaking process involving a notice of proposed rulemaking, in response to industry feedback that the threshold was too low for gas pipelines. 86 Fed. Reg. 2219. This rule increased the gas incident reporting threshold for property damage to $122,000, to be adjusted annually for inflation. 49 C.F.R. part 191, app'x. With record inflation, the current threshold stands at over $149,000 as mentioned in the notice. Now PHMSA seeks to increase the liquids threshold without proper notice and comment. PST disagrees with this decision and this method.

There is no reason for the estimated property damage incident and accident reporting thresholds to be so high, and for PHMSA to act now without a legitimate comment period. $50,000 is a substantial amount of money for a member of the public, even if it is not for wealthy oil and gas companies. "Accidents" that result in $50,000 or more of damage should be reported to PHMSA and this data made available in the public domain. Rather than increasing the estimated property damage threshold for hazardous liquid and carbon dioxide pipeline accidents, PHMSA should make the thresholds for the reporting of property damage for hazardous liquid and natural gas pipelines equal by lowering the property damage threshold for gas pipeline incidents back to $50,000.

PHMSA's expansion of not including the cost of lost product in the calculation is nuanced. PST can agree with PHMSA that the cost of lost product is not relevant in the immediate response to an emergency and determining if a DOT-reportable accident has occurred because the price of the transported commodity can vary has no basis in the severity of an event. However, the cost of lost product is critical in assessing industry costs associated with accidents and releases. The cost of lost product must remain as a required information collection data point in accident reports.

PHMSA's Executive Order 12866 analysis appears to be flawed. To calculate the cost savings it claims, PHMSA states that it used 57 hazardous liquid pipeline accidents reported between 2010 and 2024. These accidents involved property damage of $50,000 to $149,700 but did not involve a fire, release of five gallons or more, or any deaths or injuries.[6] A "hazardous pipeline accident" is not a defined term and it is unclear from PHMSA's notice if accidents involving pipelines transporting carbon dioxide are included in the

[6] 90 Fed. Reg. at 28,052 (PST is unable to confirm this number independently).

analysis. PHMSA's analysis also fails to mention or otherwise include a release that results in an explosion.[7] Notwithstanding the adjustment of an arbitrary monetary threshold for accident reporting, PHMSA's characterization of accidents involving total property damage between $50,000 and $149,700 as "unnecessary reporting burdens[,]" has never been established in this rulemaking or any other proceeding. On these points, PST believes that PHMSA should perform a complete analysis to accurately determine the effect of its notice.

Finally, PHMSA states in the DFR that in its May 18, 2023 notice that it made a similar proposal that was "was subject to no controversy" and that it "anticipates that the change is even less consequential for hazardous liquid pipelines" because of the volumetric criterion and the lower likelihood of being located under pavement in comparison to distribution lines.[8] Pipeline Safety Trust did submit comments on this issue that directly opposed an increase in the threshold and the inclusion of the value of product in the calculation, so PHMSA's characterization is false:

> PST further recommends that PHMSA consider revising its incident reporting criteria for gas pipelines to address long-time insufficiencies with this standard. PHMSA should require reporting for all incidents in which a fire or explosion occurred and lower the property damage threshold to $50,000 to match that of the liquids regulations. Until recently, the property damage thresholds for reporting incidents to PHMSA was $50,000 for both gas and hazardous liquid pipelines. However, in 2021, PHMSA issued final rule in response to industry feedback that the threshold was too low for gas pipelines. This rule increased the gas incident reporting threshold for property damage to $122,000, to be adjusted annually for inflation. With record inflation, the current threshold stands at a staggering $139,700. The gas rule excludes the value of the gas itself, which is also distinct from the liquid rule. There is no reason the incident reporting thresholds for natural gas and liquids pipelines to differ to such an extreme, and amending this standard will support PHMSA's efforts to address the seriousness of natural gas leaks.[9]

It is obvious from that comment that PST did indeed previously assert that it disagreed with PHMSA's policy, as it did in 2021 when it commented:

> This is very similar to the proposal PHMSA is making in its liquid regulatory rollback proposal, and we have submitted comments opposing it for the same reasons: Our view is that failures of a magnitude that causes $50,000 in damage are failures that should be reported. PHMSA should be seeking to obtain more information about pipeline failures, not less. They can only make

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[7] *Id.*; *See* 49 C.F.R. § 195.50(a).
[8] 90 Fed. Reg. at 28,051.
[9] Comment of Pipeline Safety Trust re Gas Pipeline Leak Detection and Repair (Docket No. PHMSA-2021-0039) 9 (Aug. 16, 2023) https://www.regulations.gov/comment/PHMSA-2021-0039-25774.

regulatory decisions about design, manufacture or operating conditions they know cause problems. If they are told about fewer problems, they will not be in a position to determine whether they need to regulate certain safety issues. This change will also disrupt any trend analyses of failures over time because of the definition change, and PHMSA acknowledges that a reduction in reporting reduces "the amount of safety data available to PHMSA, state pipeline safety programs, operators, and the public."[10]

If PHMSA is determined to re-define incident, it should undertake a comprehensive look at that definition, and not merely adjust the property damage criteria. Making incremental, sequential adjustments to the definition will destroy trend analyses for as long as the adjustments go on. Our preference is that all potential changes get identified and analyzed and considered all at once, and a new definition of incident get approved one time. Reducing the number of incidents reported provides PHMSA less safety data, and saves operators very little money, while potentially misleading the public about this magical improvement in the number of reported incidents that occur in future years. PHMSA and the industry have all committed to pursuing a goal of zero incidents. We should not seek to reach that goal by defining our way out of reportable incidents.[11]

Though five years have passed since PST submitted comments on this topic, and two years since the most recent comment, PST still strongly holds this position, and disagrees with PHMSA's characterization. PHMSA cannot effectively regulate this industry if it is unaware of incidents—and PST will continue calling it out if it uses this revision to claim that "accident" trends have improved over time.

Thank you for the opportunity to provide feedback to PHMSA about this DFR. If you have any questions or would like to discuss any of our recommendations, please contact me at erin@pstrust.org or (360) 543-5686.

Sincerely,

Erin Sutherland

Erin Sutherland
Policy & Program Director/Counsel

[10] Pipeline Safety: Gas Pipeline Regulatory Reform, 85 Fed. Reg. 35,240, 35,245 (June 6, 2020).
[11] Comment of the Pipeline Safety Trust re Gas Pipeline Regulatory Reform (Docket No. PHMSA-2018-0046) 2–3 https://www.regulations.gov/comment/PHMSA-2018-0046-0042.