



MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF TRANSPORTATION AND THE U.S. DEPARTMENT OF THE INTERIOR REGARDING OUTER CONTINENTAL SHELF PIPELINES

I. Introduction and Purpose

The Pipeline and Hazardous Materials Safety Administration (PHMSA), within the U.S. Department of Transportation (DOT), and the Bureau of Safety and Environmental Enforcement (BSEE), within the U.S. Department of the Interior (DOI) (collectively, the Agencies, or individually, Agency), are responsible for exercising regulatory authority with respect to natural gas and hazardous liquids pipelines located on the Outer Continental Shelf (OCS) of the United States.

The purpose of this Memorandum of Understanding (MOU) is to improve coordination between the Agencies regarding the regulation of pipelines on the OCS. Improved coordination will maximize the exchange of relevant information, avoid duplicative efforts, increase human health and environmental safety, and provide for an overall increase in the efficiency and effectiveness of the Federal Government by enabling the Agencies to implement compatible regulatory requirements for all OCS pipelines whether regulated by BSEE or PHMSA.

This MOU identifies responsibilities for different aspects of OCS pipeline oversight consistent with the DOI and DOT authorities established by statute and regulation. The DOI has authority over upstream producer-operated pipelines, and DOT has authority over downstream transporter-operated pipelines. This MOU supersedes the MOU dated December 10, 1996, between DOT and DOI regarding OCS pipelines.

The terms used in this MOU have the meanings given to them in the Outer Continental Shelf Lands Act (OCSLA), as amended, 43 U.S. Code (U.S.C.) §§ 1331 *et seq.*, the Clean Water Act (CWA), 33 U.S.C. § 1321, the Pipeline Safety Act (49 U.S.C. §§ 60101 *et seq.*), and other relevant statutes, as well as the Agency regulations implementing these statutes.

II. Legal Authority for Agency Roles

- A. Pipeline and Hazardous Materials Safety Administration: The PHMSA exercises authority under the Pipeline Safety Act (49 U.S.C. §§ 60101 *et seq.*) to prescribe and enforce minimum safety standards for pipeline facilities and pipeline transportation, including the transportation of natural gas and hazardous liquids by pipeline.

Applicable PHMSA regulations are promulgated at 49 Code of Federal Regulations Parts 190 through 199, which govern pipeline design, construction, operation, and maintenance, among other things.

- B. Bureau of Safety and Environmental Enforcement: The BSEE is responsible for promulgating and enforcing regulations for the promotion of safe pipeline operations, protection of the environment, and conservation of the natural resources of the OCS, in accordance with the OCSLA and other statutes (e.g., CWA and National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*). Pursuant to OCSLA, BSEE is responsible for granting rights-of-way (ROWs) for the construction of certain pipelines and associated facilities on the OCS. Pursuant to the CWA, 33 U.S.C. § 1321, BSEE is responsible for reviewing and approving oil spill response plans submitted by owners and operators of offshore pipelines that “handle, store, or transport oil.” The BSEE’s regulations are codified in Title 30 (Mineral Resources) of the Code of Federal Regulations.

III. Agency Responsibilities

- A. Statutory and Regulatory Responsibilities: The Agencies recognize that understanding the statutory and regulatory responsibilities of each other is integral to effective coordination. These responsibilities are therefore described below.
1. *BSEE Responsibilities*:
 - a. Establish and enforce design, construction, operation, maintenance, and decommissioning regulations and investigate significant incidents pursuant to the OCSLA for all OCS pipelines (e.g., producer-operated pipelines and all OCS pipeline ROW grants, including associated transporter pipelines).
 - b. Conduct safety and health inspections of BSEE-authorized ROW accessory platforms, and on behalf of and as authorized by the United States Coast Guard, in accordance with 33 Code of Federal Regulations Subchapter N. The BSEE uses the potential incidents of noncompliance checklist for inspections and the issuance of any citations consistent with relevant regulations.
 - c. Require all pipeline and pipeline ROW applicants to submit plats identifying where the applicant understands regulatory authority transfer points are located.
 - d. When BSEE approves a pipeline ROW, which an applicant represents is partially or completely regulated by PHMSA, BSEE may condition its approval on the applicant designing, constructing, operating, and maintaining the pipeline in compliance with PHMSA regulations, including risers, appurtenances, and safety systems. The BSEE also may condition its approval with additional standards, derived from and in support of National Environmental Policy Act analyses, designed to protect the related coastal, marine, and human environments.

2. *PHMSA Responsibilities:* Establish and enforce design, construction, operation, and maintenance regulations and investigate significant incidents for all OCS pipelines beginning downstream of the point at which operating responsibility transfers from a producing operator to a transporting operator, or downstream of the last valve on the last production facility on the OCS for pipelines that cross into State waters. Such points will be fixed and clearly designated by the operators of the facilities, if practical.
- B. Responsibilities Pursuant to this MOU: Below, the Agencies describe the efforts they intend to take to enable effective coordination.
1. *Rulemaking:* The Agencies will consult regarding rulemaking efforts affecting OCS pipelines during the development of regulatory requirements and share supporting analyses on subjects of common interest.
 2. *Records Sharing:*
 - a. To ensure expeditious and coordinated efforts, the Agencies agree to share or provide access to all requested information and data submitted by OCS pipeline operators to the extent permitted by law and necessary to allow each Agency to meet its regulatory responsibilities.
 - b. The Agencies will provide electronic copies of their approval, acceptance, or acknowledgement letters associated with the other Agency's authorized ROWs, including line number designations.
 - c. The Agencies will provide the other Agency with any notice, agreement, or MOU with any Federal or State agency concerning OCS pipelines.
 3. *Freedom of Information Act:* In the event the Agencies receive Freedom of Information Act (5 U.S.C. § 552) requests for records related to the subject of this MOU, the Agency receiving the request will: (a) consult with the other Agency before releasing any responsive records to the requester when the other Agency has a substantial interest in the responsive records; and (b) refer the responsive records request to the other Agency for processing when the responsive records originated with the other Agency.
 4. *Consultation:* The Agencies will consult on research, development, training, and demonstration activities, where appropriate, to jointly improve pipeline safety. This coordination may include:
 - a. Consultation on schedules for the solicitation of research projects;
 - b. Participation in reviewing research white papers and full proposals received;
 - c. Co-funding of research;
 - d. Exchange of technical information and training opportunities;
 - e. Participation in workshops or technical sessions held by either Agency, academia, research institutes or organizations, other government agencies, or other entities involved in pipeline research, development, or demonstration;

- f. Dissemination of technological solutions identified through research, development, and demonstration projects; and
 - g. Review of research findings of international organizations involved in pipeline safety, integrity, and reliability research.
5. *Inspections, Investigations, and Enforcement:*
- a. Each Agency will endeavor to keep the other informed of newly discovered or emerging safety issues or concerns, including information relating to any incident investigations or enforcement actions that an Agency may undertake, to the extent permitted by law.
 - b. If either Agency initiates an enforcement action that requires a facility shut-in, the initiating Agency will, as soon as practicable, notify the other Agency.
 - c. The Agencies may perform joint inspections of pipeline segments and associated facilities where either has authority, particularly when there are potential safety impacts from one facility on another.
 - d. The Agencies may perform joint investigations of incidents involving OCS pipeline segments where either has authority. They will share lessons learned from incident investigations.
 - e. The Agencies may agree to exceptions to this MOU on a facility-by-facility or area-by-area basis as appropriate, to the extent permitted by law.
 - f. The BSEE will allow PHMSA to use, on a reimbursable basis, BSEE-contracted helicopters for PHMSA's inspection of OCS pipelines, subject to helicopter availability.

IV. General Provisions

- A. The Agencies will meet periodically to review this MOU for any needed revisions.
- B. Nothing in this MOU alters, limits, or expands the statutory or regulatory authority of PHMSA or BSEE.
- C. Nothing in this MOU relieves an OCS pipeline lessee, ROW holder, contractor, owner, or operator from complying with the statutes, regulations, or orders of any State or Federal agency.
- D. Under a separate 1994 MOU among BSEE, PHMSA, and the U.S. Environmental Protection Agency, pursuant to the CWA, 33 U.S.C. § 1321, the Agencies have described their respective responsibilities for oil spill planning, prevention, and response according to the definition of "coastline" contained in the Submerged Lands Act, 43 U.S.C. § 1301(c). Nothing herein is intended to affect the implementation or administration of that MOU.¹

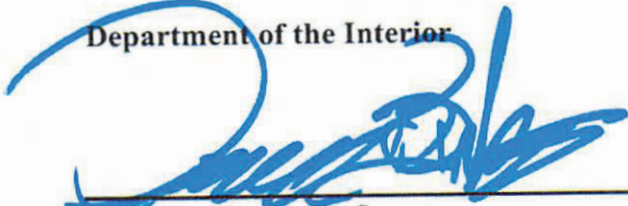
¹ Memorandum of Understanding Establishing Jurisdictional Responsibilities for Offshore Facilities, 59 FR 9494 (Feb. 28, 1994).

- E. Nothing in this MOU may be construed to obligate PHMSA, BSEE, or the United States to any current or future expenditure of resources in advance of the availability of appropriations from Congress. Nor does this agreement obligate PHMSA, BSEE, or the United States to spend funds on any project or purpose, even if the funds are available.
- F. This MOU is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.
- G. This MOU includes an attachment that supports enhanced coordination between the Agencies. This attachment, entitled "Points of Contact," lists respective points of contact for implementation of this MOU. The attachment may be updated by mutual written agreement by the listed "General Matters" contacts. Any updates to the attachment will be entitled, "Updated Points of Contact," with version date. Such updates to the attachment will not constitute material changes to this MOU and, as such, will not require that the MOU itself be updated. Instead, the "Updated Points of Contact" will become the operative attachment.

V. Effective Date and Duration

- A. This MOU is effective upon acceptance by both Agencies as indicated by the signatures below.
- B. Upon signature by both Agencies, this MOU supersedes the MOU dated December 10, 1996, between DOT and DOI regarding OCS pipelines.
- C. This MOU may be modified upon written request of one Agency and the subsequent written concurrence of the other Agency.
- D. This MOU may be terminated by either Agency upon 60-day written notice to the other Agency.

Department of the Interior



David L. Bernhardt, Secretary

Date:

12/21/2020

Department of Transportation



Elaine Chao, Secretary

Date:

12-22-2020

ATTACHMENT: POINTS OF CONTACT

I. General Matters

Deputy Associate Administrator for Field Operations
Pipeline and Hazardous Materials Safety Administration
Office of Pipeline Safety, E22-207
1200 New Jersey Avenue SE
Washington, DC 20590

Bureau of Safety and Environmental Enforcement
Chief, Office of Offshore Regulatory Programs (OORP)
1849 C Street NW
Washington, DC 20240

II. Safety Concerns

Pipeline and Hazardous Materials Safety Administration

Southwest Region Director
PHMSA Office of Pipeline Safety
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BSEE Gulf of Mexico Region
Regional Supervisor, Regional Field Operations
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BSEE Pacific Region
Regional Supervisor, Strategic Operations
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BSEE Alaska Region
Regional Supervisor, Field Operations
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III. ROW Letters

Gulf of Mexico Region: pipelines@bsee.gov

Alaska Region: Mail Stop 500
3801 Centerpoint Drive
Anchorage, AK 99503

Pacific Region: Mail Stop 102
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