



U.S. Department  
of Transportation  
**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Ave., S.E.  
Washington, DC 20590

June 5, 2017

The Honorable Bill Shuster  
Chairman, Committee on Transportation  
and Infrastructure  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Enclosed is the Report on Processes and Procedures for Removing Financial Conflict of Interest in the Peer Review of Pipeline Safety Research and Development as required by Section 22 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2016, Public Law No. 114-183. I am submitting this report on behalf of the Secretary of Transportation.

The Act requires the Secretary of Transportation to implement procedures, to the greatest extent practicable, that produce research results that are peer-reviewed by independent experts and not by persons or entities that have a financial interest in the pipeline, petroleum, or natural gas industries, or that would be directly impacted by the results of the projects.

Similar letters have been sent to the Ranking Member of the House Committee on Transportation and Infrastructure; the Chairman and Ranking Member of the House Committee on Energy and Commerce; the Chairman and Ranking Member of the House Committee on Science, Space, and Technology; and to the Chairman and Ranking Member of the Senate Committee on Commerce, Science, and Transportation.

Sincerely,

Howard W. McMillan  
Acting Deputy Administrator

Enclosure



U.S. Department  
of Transportation  
**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Ave., S.E.  
Washington, DC 20590

June 5, 2017

The Honorable Peter A. DeFazio  
Ranking Member, Committee on Transportation  
and Infrastructure  
U.S. House of Representatives  
Washington, DC 20515

Dear Congressman DeFazio:

Enclosed is the Report on Processes and Procedures for Removing Financial Conflict of Interest in the Peer Review of Pipeline Safety Research and Development as required by Section 22 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2016, Public Law No. 114-183. I am submitting this report on behalf of the Secretary of Transportation.

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Sincerely,



Howard W. McMillan  
Acting Deputy Administrator

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U.S. Department  
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**Pipeline and Hazardous  
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1200 New Jersey Ave., S.E.  
Washington, DC 20590

June 5, 2017

The Honorable Greg Walden  
Chairman, Committee on Energy  
and Commerce  
U.S. House of Representatives  
Washington, DC 20515

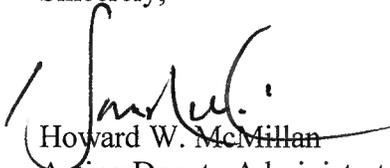
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Howard W. McMillan  
Acting Deputy Administrator

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U.S. Department  
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**Pipeline and Hazardous  
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Administration**

1200 New Jersey Ave., S.E.  
Washington, DC 20590

June 5, 2017

The Honorable Frank Pallone  
Ranking Member, Committee on Energy  
and Commerce  
U.S. House of Representatives  
Washington, DC 20515

Dear Congressman Pallone:

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Sincerely,

Howard W. McMillan  
Acting Deputy Administrator

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U.S. Department  
of Transportation  
**Pipeline and Hazardous  
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1200 New Jersey Ave., S.E.  
Washington, DC 20590

June 5, 2017

The Honorable Lamar Smith  
Chairman, Committee on Science, Space  
and Technology  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

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Sincerely,



Howard W. McMillan  
Acting Deputy Administrator

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U.S. Department  
of Transportation  
**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Ave., S.E.  
Washington, DC 20590

June 5, 2017

The Honorable Eddie Bernice Johnson  
Ranking Member, Committee on Science, Space  
and Technology  
U.S. House of Representatives  
Washington, DC 20515

Dear Congresswoman Johnson:

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Sincerely,

Howard W. McMillan  
Acting Deputy Administrator

Enclosure



U.S. Department  
of Transportation  
**Pipeline and Hazardous  
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1200 New Jersey Ave., S.E.  
Washington, DC 20590

June 5, 2017

The Honorable John Thune  
Chairman, Committee on Commerce, Science,  
and Transportation  
United States Senate  
Washington, DC 20510

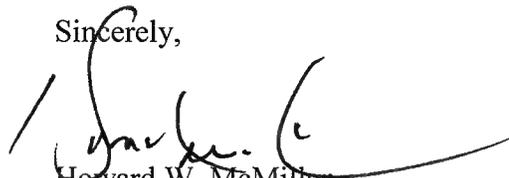
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Sincerely,



Howard W. McMillan  
Acting Deputy Administrator

Enclosure



U.S. Department  
of Transportation  
**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Ave., S.E.  
Washington, DC 20590

June 5, 2017

The Honorable Bill Nelson  
Ranking Member, Committee on Commerce, Science,  
and Transportation  
United States Senate  
Washington, DC 20510

Dear Senator Nelson:

Enclosed is the Report on Processes and Procedures for Removing Financial Conflict of Interest in the Peer Review of Pipeline Safety Research and Development as required by Section 22 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2016, Public Law No. 114-183. I am submitting this report on behalf of the Secretary of Transportation.

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Sincerely,

A handwritten signature in black ink, appearing to read "Howard W. McMillan".

Howard W. McMillan  
Acting Deputy Administrator

Enclosure

**Process and Procedures for Removing  
Financial Conflicts of Interest  
in the Peer Review of Pipeline  
Safety Research and Development**

**Department of Transportation**

**Pipeline and Hazardous Materials Safety Administration**

**May 2017**

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## **Pipeline Safety Research and Development**

### **Process and Procedures for Removing Financial Conflicts of Interest**

Section 22 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act (PIPES Act) of 2016 calls upon the Secretary of the Department of Transportation (DOT), within 180 days after the enactment date of June 22, 2016, to:

- (1) Implement processes and procedures to ensure that activities listed under Subsection C, to the greatest extent practicable, produce results that are peer-reviewed by independent experts and not by persons or entities that have a financial interest in the pipeline, petroleum, or natural gas industries, or that would be directly impacted by the results of the projects; and
- (2) Submit a report describing the processes and procedures implemented under Paragraph 1 to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committees on Transportation and Infrastructure; Energy and Commerce; and Science, Space, and Technology.

#### **Executive Summary**

In 2004, the Office of Management and Budget (OMB) put out a bulletin outlining required procedures for Federal programs that incorporate peer review into their activities. In response, the DOT created procedures to govern the implementation of the bulletin, as well as a peer-review process aimed at uncovering technical problems, guiding projects, and offering technical expertise. Potential panelists are judged to a rigorous standard prior to their appointment to a peer-review panel, must certify that they will not disclose any information regarding the research projects, and are required to sign a form stating they have no conflicts of interest that might bias their judgment. This allows PHMSA to continue to facilitate peer-reviewed research while abiding by the OMB bulletin.

In response to the PIPES Act of 2016 mandate, the definition of conflict of interest received a legal review, and was slightly revised. A “conflicts of interest” is now defined as “a current financial or other interest that conflicts with the service of an individual on the review panel because it could impair the individual’s objectivity or could create an unfair competitive advantage for a person or an organization.”

#### **Background**

Research can be an effective tool for government regulators to spur innovative technology that regulated companies can use to increase public safety. The modern inception of the Pipeline Safety Research and Development Program within DOT’s Pipeline and Hazardous Materials Safety Administration (PHMSA) was mandated by the Pipeline Safety Improvement Act of 2002

(PSIA 2002). Since PSIA 2002, the Pipeline Safety Research and Development Program has worked on implementing a collaborative and coordinated research strategy with stakeholders who share PHMSA's safety goals. Many technical and technological solutions entered the market as a direct result of this program, and the program's results are transparent and publicly posted on PHMSA's research program website at: <https://primis.phmsa.dot.gov/rd/>.

The congressional mandate in PSIA 2002 prescribes that the Secretary of Transportation, when developing an overall research strategy, consult with or seek advice from appropriate State pipeline safety officials and pipeline safety advocates, as well as representatives of utilities, manufacturers, institutions of higher learning, Federal agencies, pipeline research institutions, national laboratories, labor organizations, environmental organizations, professional and technical societies, and the natural gas, crude oil, and petroleum product pipeline industries. Balanced and independent subject matter experts (SMEs) are required to review the progress of PHMSA's research portfolio without creating actual or apparent financial conflicts of interest.

Since 2002, PHMSA has operated a research program that embodies the PSIA 2002 congressional mandate. PHMSA continues to refine its overall systematic process<sup>1</sup> and sub-processes via continuous improvement review of program effectiveness. One major step within this systematic process is addressing the quality of research results.

In 2006, PHMSA added a post-award peer-review process to complement a pre-solicitation/pre-award process and to improve the assessment of research quality. PHMSA executes this post-award peer-review process annually, reporting the findings on its research program website.<sup>2</sup> In response to the PIPES Act of 2016 mandate, the definition of conflict of interest received a legal review, and was slightly revised. "Conflicts of interest" is now defined as "a current financial or other interest that conflicts with the service of an individual on the review panel because it could impair the individual's objectivity or could create an unfair competitive advantage for a person or an organization." PHMSA strongly believes the current process addresses the congressional intent of the PIPES Act of 2016, producing research results that are peer-reviewed by independent experts rather than persons or entities that have a financial interest in the pipeline, petroleum, or natural gas industries, or that would be directly impacted by the results of the projects.

This report highlights the existing peer review process and provides for independence.

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<sup>1</sup> *Research & Development: Systematic Evaluation Process*. PHMSA: Pipeline Technical Resources. <https://primis.phmsa.dot.gov/rd/evaluation.htm>.

<sup>2</sup> *Research & Development: R&D Program Annual Panel Peer Review*. PHMSA: Pipeline Technical Resources. [https://primis.phmsa.dot.gov/rd/annual\\_peer\\_review.htm](https://primis.phmsa.dot.gov/rd/annual_peer_review.htm).

## **Introduction**

Congress used the 2001 Information Quality Act<sup>3</sup> to direct the OMB to “provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.” A resulting 2004 OMB bulletin entitled, “Final Information Quality Bulletin for Peer Review”<sup>4</sup> prescribes required procedures for Federal programs.

During the 2005 calendar year, DOT Operating Administrations (OA) developed and executed a systematic process for peer reviews for all influential and highly influential information intended for public dissemination.

The Office of the Secretary of Transportation produced procedures governing OA implementation of this OMB bulletin. These procedures, combined with the OMB bulletin, serve as the basis and justification for the PHMSA Pipeline Safety R&D Program peer reviews.

The goal of these peer reviews is to uncover technical problems, keep projects on-target and aligned with stakeholder needs, and give technical guidance using technically competent, independent, objective experts. These reviews are held annually for active research projects, usually occurring in the second or third quarter of each calendar year.

## **Peer-Review Panelist Selections**

PHMSA selects peer-review panelists based on the 2004 OMB Final Information Quality Bulletin for Peer Review using these three criteria: expertise, balance, and independence. These criteria are defined by PHMSA as follows:

**Expertise:** Panelists shall have the expertise, experience and skills, including specialists from multiple disciplines, as necessary over the research to be reviewed.

**Balance:** The peer review panel shall be sufficiently broad and diverse to fairly represent the relevant scientific and technical perspectives and fields of knowledge over the research to be reviewed.

**Independence:** Panelists shall not have participated in development of the work product and are free of conflicts of interests.

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<sup>3</sup> *Public Law. No. 106-554-515(a)*. 106<sup>th</sup> Congress. Retrieved from the Government Printing Office. <https://www.gpo.gov/fdsys/pkg/PLAW-106publ554/pdf/PLAW-106publ554.pdf>.

<sup>4</sup> *Final Information Quality Bulletin for Peer Review* [http://www.cio.noaa.gov/services\\_programs/pdfs/OMB\\_Peer\\_Review\\_Bulletin\\_m05-03.pdf](http://www.cio.noaa.gov/services_programs/pdfs/OMB_Peer_Review_Bulletin_m05-03.pdf)

Using these criteria, PHMSA has effectively assembled panels including regulators (retired or active), academics, independent consultants, and members of standards development organizations.

Active or retired SMEs within regulated companies were used sporadically only in the first few years of executing this process, and PHMSA's Conflict of Interest procedures (carried out per OMB guidance and described in this report) determined that they had no financial conflicts of interest. It should also be noted that all panelists in more recent years have either come from academia or were active or retired government employees. Regardless of their backgrounds, all participating panelists were determined to have no financial conflicts of interest.

Panelists are identified by name and affiliation in the summary peer-review report for each year. They also provide short biographies describing work history and technical qualifications, which can be found in Appendix B of the report.

### **Conflicts of Interest & Non-Disclosure**

In response to the congressional mandate to report on this subject, PHMSA conducted a thorough review of its Non-Disclosure/Conflict of Interest definition, as well as the form used within its post award peer-review process. PHMSA made a minor change, redefining a conflict of interest as "a current financial or other interest that conflicts with the service of an individual on the review panel because it could impair the individual's objectivity or create an unfair competitive advantage for a person or organization."

Panelists are prohibited from disclosing any information about the research projects outside of what is presented in the peer-review report.

Each panelist agrees to the terms of and signs a Non-Disclosure/Conflict of Interest form prior to becoming an official reviewer at a peer-review event. All panelists, regardless of their backgrounds, must sign this form in order to participate, recusing themselves from reviewing any research project identified on their form as a conflict. An example of the Non-Disclosure/Conflict of Interest form historically used is shown in Appendix A, and an example of the new definition on page one of the Non-Disclosure/Conflict of Interest form is shown in Appendix B. Prospective panelists who do not agree to these conditions, or do not sign the Non-Disclosure/Conflict of Interest form, are prohibited from serving on the review panel.

Each panel is comprised of three reviewers whose evaluations are balanced so that one reviewer cannot completely determine the outcome during the post award peer review processes. Reviewers must also provide comments in support of their evaluations in both an individual evaluation category and by overall strong and weak points for each project. These comments are summarized and noted in the peer-review report.

## **How Does PHMSA Address Conflict of Interest?**

All potential panelists submit their Non-Disclosure/Conflict of Interest form to PHMSA for review. This information, along with resumes, allows PHMSA to determine the expertise, balance and independence of the panel. As required on the form, panelists must disclose any financial conflict of interest with any of the projects to be peer reviewed in a given calendar year.

If a conflict(s) is determined then PHMSA would act in one or more of the following ways:

- Move the panelist with the conflict to a different panel where no conflict exists; or
- Allow the panelist to participate where the panelist would recuse themselves from reviewing that project(s); or
- If too many conflicts exist, excuse the panelist from participating in that calendar year peer review.

## **Summary**

PHMSA's Pipeline Safety Research Program continues to execute a program of peer-reviewed research that was first established in 2006, and was slightly modified in 2016 after a legal review of the agency's peer review practices. Each participating reviewer must agree to the terms of and sign a Non-Disclosure/Conflict of Interest form prior to becoming an official reviewer at a peer-review event. This action clears participating reviewers of financial conflicts of interest. Peer-review panels of recent years have been comprised largely of academic panelists, a trend which PHMSA will strive to continue.

PHMSA's process, actions, and procedures described above are designed to ensure that research results are peer-reviewed by independent experts to the greatest extent practicable.

## Appendix A

### CONFLICT OF INTEREST/NON-DISCLOSURE FORM

Pipeline and Hazardous Materials Safety Administration (PHMSA)  
Pipeline Safety Research and Development Program  
Project Peer Reviews

#### Conflicts of Interest

PHMSA defines "conflicts of interest" as a current direct project specific leadership interest that conflicts with the service of an individual on the peer review panel. Your company can financially support an individual or organization directly or indirectly through a trade organization. However, you are in conflict if you represent the primary leadership overseeing the technical performance of that individual or organization. Group oversight is acceptable but chair of that group would be unacceptable.

#### Non-Disclosure

Maintain the confidentiality of all products and deliberations on the research projects presented outside of what is presented in the Peer Review Report.

#### Terms of this Agreement

In the space provided, please identify by contractor name, any "conflicts of interest" you may have from the list of research organizations provided in Appendix A. You must then recuse yourself from peer reviewing that organization's project or projects in which a conflict of interest exists. Insert N/A for no conflicts.

I agree to recuse myself during the peer review from any research organization identified in the space above and to not disclose products and deliberations on any of the research projects part of the reviews outside of what is presented in the Peer Review Report.

Panelist Signature:

Date:

\_\_\_\_\_

Please scan and email or fax this signed page to Robert Smith at 202-493-2311

## Appendix A

The following Research Organizations will be evaluated during the peer review:

1. CompanyName and Mailing Address is inserted here for all projects to be reviewed.

## Appendix B

### CONFLICT OF INTEREST/NON-DISCLOSURE FORM

Pipeline and Hazardous Materials Safety Administration (PHMSA)

Pipeline Safety Research and Development Program

Project Peer Reviews

#### Conflicts of Interest

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Panelist Signature:

Date:

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