



**UNITED STATES DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**

**Hearing on
The American Energy Initiative: Pipeline Infrastructure and
Community Protection Act of 2011**

**Before the
Committee on Energy and Commerce
Subcommittee on Energy and Power
United States House of Representatives**

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Chairman Whitfield, Ranking Member Rush, members of the Subcommittee, thank you for the opportunity to appear today to discuss the Pipeline and Hazardous Materials Safety Administration's (PHMSA) oversight of America's vast network of energy pipelines and reauthorization of the pipeline safety program.

Safety is the number one priority of Secretary Ray LaHood, myself, and the employees of PHMSA. PHMSA and our State partners' safety oversight of the nation's pipelines provides critical protection for the American people and our environment. The Department is actively working to ensure the safety and reliability of the nation's pipeline transportation infrastructure and prevent releases on the 2.5 million miles of pipelines it oversees. While the pipeline industry's overall safety record continues to improve as the result of recently implemented regulatory initiatives, the recent ExxonMobil incident has focused all of our attention on the importance of preventing pipeline failures

Recently implemented regulatory initiatives have fulfilled the majority of statutory requirements of the Pipeline Inspection, Protection and Enforcement Safety (PIPES) Act of 2006. PHMSA is in the final stages of developing a Notice of Proposed Rulemaking to address the last remaining PIPES Act mandate covering federal enforcement of third party excavation damage to pipelines. The following is a short description of several other key provisions.

I. PIPES ACT OF 2006 KEY ACCOMPLISHMENTS

Control Room Management - In December 2009, PHMSA published a final rule to improve control room management for pipeline operators. The rule requires pipeline operators to develop and implement procedures to reduce employee fatigue, improve employee training and

response to alarms, and clearly define the roles and responsibilities of employees in control rooms. The rule was set to be implemented by early 2013.

Recently we have accelerated the implementation of this rule. The majority of the procedures will now be implemented by October 1, 2011, 16 months sooner than the original rule. The deadline for pipeline operators to implement regulations related to training and alarm management also will be shifted to August 1, 2012, six months sooner than the original rule.

State Partnership - PHMSA increased funding to its State pipeline safety partners. PHMSA also provides comprehensive training for all State and Federal pipeline safety inspectors on both compliance oversight and safety investigation functions. To support implementation of the distribution integrity management (DIMP) rule, PHMSA trained State inspectors, helped develop inspection forms, FAQs, and inspection guidance for implementing DIMP, and performed joint Federal-State pilot inspections to validate and enhance inspection forms and guidance.

Damage Prevention - The vast majority of America's pipeline network is underground making pipelines vulnerable to "dig-ins" by excavators. While excavation damage is 100% preventable, it remains a leading cause of pipeline incidents involving fatalities and injuries. PHMSA continues to provide State Damage Prevention grants.

Eligible grantees include State one call centers, State pipeline safety agencies, or any organization created by State law and designated by the Governor as the authorized recipient of the funding. PHMSA also uses the authority in the PIPES Act to promote public education awareness with national programs such as the "811- Call Before You Dig" initiative and the Common Ground Alliance (CGA). PHMSA continues to provide funding assistance for CGA's 811 advertising campaign.

Emergency Response – PHMSA funds grants to support training for firefighters and others to respond to pipeline emergencies safely, including the development of a new internet based training program through a cooperative agreement with the National Association of State Fire Marshals. The training curriculum, “Pipeline Emergencies – 2nd Edition,” builds off of the positive results of the previous edition, which helped train over 45,000 first responders in the U.S. on how to safely respond to natural gas and hazardous liquid pipeline leaks, spills and fires. When incidents occur, PHMSA works closely with responding Local, State, and Federal officials to assure the impact to the public and environment is minimized and that the pipeline company is fully cooperating on safety issues.

II. STATUS OF RECOMMENDATIONS FROM OVERSIGHT AGENCIES

PHMSA works with many governmental partners to promote safety. The National Transportation Safety Board (NTSB), the Department’s Office of Inspector General (OIG), and the Government Accountability Office (GAO) have a vested interest in the safe and reliable operation of the nation’s pipeline infrastructure. PHMSA is working aggressively to be responsive to all of these organizations and their recommendations.

Through rulemaking and pipeline safety advisories since 2009, PHMSA has worked hard to obtain NTSB closure on 12 of the Board’s safety recommendations, addressing leak detection systems, excess flow valves, human fatigue, and operations of pipeline companies’ control rooms, as well as integrity management for distribution pipelines in high consequence areas. Currently, six safety recommendations remain open where the NTSB has communicated it has accepted PHMSA’s response to how the agency is addressing each recommendation. Additionally, the NTSB issued PHMSA two new safety recommendations for which the agency

is developing a response. During that same period, PHMSA also obtained closure on all its pending Office of Inspector General and Government Accountability Office recommendations.

III. DOT's PIPELINE SAFETY ACTION PLAN

While Congress works through the reauthorization of the pipeline safety program, PHMSA is moving forward and taking a hard look at the nation's pipelines. Serious pipeline incidents have dropped by more than half over the past 20 years while all the traditional measures of risk exposure have risen – population, energy consumption, and pipeline ton-miles. The number of liquid pipeline spills with environmental consequences has also decreased over the last decade. We aim to continue the downward long-term trend.

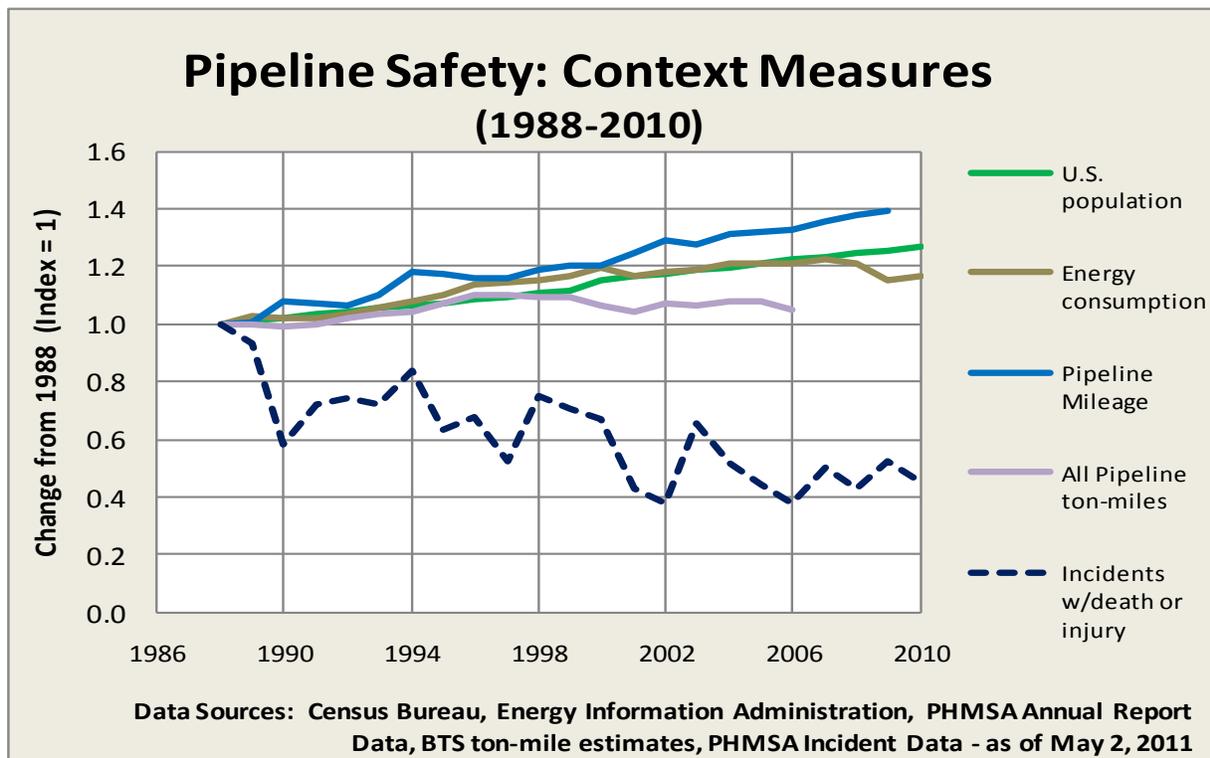


Figure 1: PHMSA Incident Data

The nation's pipeline infrastructure – like our roads, bridges, ports and rail infrastructure – needs more attention. Under Secretary LaHood's leadership, we've developed an action plan that will ensure the safety of the American people and the integrity of the pipeline infrastructure to deliver energy for future generations. The action plan includes three components:

Call to Action – We are engaging pipeline safety stakeholders in the process to proactively address the parts of the pipeline infrastructure that need attention systematically. Together, we are charting a course to accelerate the identification, repair, requalification, rehabilitation and replacement of high risk pipeline infrastructure before it becomes a risk to people or the environment.

Aggressive Efforts – Secretary LaHood and I met with pipeline executives, the Federal Energy Regulatory Commission Chairman, and the National Association of Regulatory and Utility Commissioners to discuss actions that PHMSA, States, industry and the public can take to drive more aggressive actions to raise the bar on pipeline safety and the challenges to implementing these actions. PHMSA is developing a Report to America on the Pipeline Infrastructure that draws on ideas presented by stakeholders at a public meeting hosted by PHMSA earlier this year.

Transparency – PHMSA is actively seeking input from all stakeholders and is executing this plan in a transparent manner with an opportunity for public engagement, including a dedicated website.

IV. REAUTHORIZATION PRIORITIES

PHMSA looks forward to working with Congress on the reauthorization of its pipeline safety program. Reauthorization of the pipeline safety program is a top priority of the

Department and we are pleased that the “Pipeline Infrastructure and Community Protection Act of 2011” picked-up nearly all of the provisions of the Administration’s September 14, 2010 legislative proposal. While we generally support the draft bill, DOT believes that certain provisions should be modified as described below to ensure effective implementation and maximum safety benefit from available resources.

As the recent ExxonMobil incident has shown, pipeline safety requirements should be strengthened and we applaud the Committee’s efforts in drafting the legislation. At the same time, it should be kept in mind that each of the new rule mandates in the bill would require the development and publication of rulemakings in compliance with the Administrative Procedure Act. Due to requirements for comprehensive regulatory evaluations it is difficult to promulgate a significant rule in less than two years, particularly when we are working on other rules simultaneously. In addition, we have two Technical Advisory Committees that are statutorily required to vote on all pipeline rulemaking we do, and part of their charge is to consider the “reasonableness” of both the cost benefit analysis and the rule itself. Many of the bill provisions will also create new mandates for State governments as well.

Increase Civil Penalties – PHMSA supports increasing administrative civil penalties for violations leading to deaths, injuries, or significant environmental damage. The maximum penalties for violations of the pipeline safety requirements have not been increased in almost 10 years. Adequate levels of penalties are necessary to achieve deterrence goals, particularly in serious cases in which violations led to injuries, fatalities, or significant environmental damage.

However, we do not support the change the bill would make to the Administration’s proposal by removing incidents occurring in High Consequence Areas as among the incidents subject to the higher penalties. We believe higher administrative penalties for violations

affecting High Consequence Areas is consistent with our overall risk based regulatory approach to pipelines and is a key part of safety.

Damage Prevention Programs - We support strong pipeline damage prevention programs and the complete prohibition on States having any exemptions from their underground damage prevention “one-call” laws. However, the State’s may have difficulties in immediately achieving this goal. Therefore, we suggest that Congress take a phased approach to any funding restrictions to provide some time for States to remove exemptions.

Remove Statutory Exemptions of Gathering Lines – Significant spills and incidents have occurred on gathering lines and removal of these exemptions would be consistent with PHMSA’s longstanding effort to capture the remaining pipeline mileage that is currently unregulated. While the Administration proposed eliminating statutory exemptions for gathering lines, the bill only requires a review of the exemptions. We strongly believe that Congress should eliminate the statutory exemptions for gathering lines. Closing regulatory gaps was a centerpiece of the Administration’s proposal. Production facilities and flow lines would remain non-jurisdictional.

Automatic and Remote Shut Off Valves - PHMSA also supports new requirements for automatic and remote shut off valves, but suggests that Congress clarify whether the bill provision applies to both gas and hazardous liquid pipelines.

Excess Flow Valves - Likewise, we support expanding the requirements for excess flow valves to portions of gas distribution systems not yet required to have them, but believe the issue of “economic feasibility” will need to be clarified and defined in statute or regulation.

Expanding Integrity Management Protection – PHMSA supports reforms to review whether pipeline safety would be improved by expanding and revising the integrity management

program requirements beyond existing high consequence areas to additional areas. As currently drafted, however, the requirement in paragraph (d) to completely eliminate regulations based on the class location classification may be premature. Congress should give DOT the discretion to eliminate any redundant regulations but leave open the possibility that some requirements based on class location could be retained if deemed necessary for safety.

Public Awareness of Pipelines - We support openness and transparency and have already undertaken extensive efforts to make pipeline safety information available to the public online. Operators use mapping information as part of their public awareness program outreach. That outreach is generally done for residents near the pipeline by mailer and sometimes door-to-door. These mailers provide the key information a resident needs to know: how to recognize an emergency, how to react safely, how to report it, and how to dig safely near one. As currently drafted, however, the national pipeline mapping system provision could present sensitive security information issues and the Transportation Security Administration should be consulted.

Pipeline Infrastructure Data Collection Authority – PHMSA supports reforms to allow the collection of additional data on physical attributes and geospatial location pipeline data on jurisdictional pipelines. Geospatially accurate pipeline infrastructure data is critical to PHMSA's and its State pipeline safety partner's ability to perform regulatory and oversight functions.

Replacement of Cast Iron Pipe - We are committed to conducting strong oversight of cast iron pipeline systems and agree with the need for a survey but note that there is currently no requirement in the law for operators of cast iron pipelines to have replacement programs.

Leak Detection Systems - We support the study on leak detection systems and requiring computational leak detection systems where technically feasible for hazardous liquid pipelines located in high consequence areas.

Reimbursement For Design Reviews/Construction Oversight – PHMSA supports reforms to seek reimbursement from project applicants for design review, consulting, and field oversight that the agency performs for new pipeline construction projects. Currently only fully operational pipelines support the costs of PHMSA oversight through user fees. These reforms would place the associated financial burden on the applicant who stands to realize the benefits from the proposed project - without distorting PHMSA's allocation of effort and expenses to pipelines already in operation.

Authority to recover costs for design reviews is an important part of maintaining the Department's capacity to conduct oversight of new pipeline projects. However, the \$4 billion threshold in the bill would largely negate having this authority. Therefore, we do not support the \$4 billion threshold. Based on our knowledge and understanding of the current and projected costs of pipeline projects, we believe that if any threshold is set, \$500 million is the appropriate threshold. In addition, there should be restrictions on an operator's ability to circumvent this provision by breaking a project up into segments.

Special Permit Fees – PHMSA supports authority to assess filing fees for special permit applications to reimburse the agency for costs incurred to review those applications - whether for conducting technical studies or environmental analyses. The applicant who stands to benefit from the special permit project should pay for this service. We are concerned that the Bill omits the authority to collect fees from applicants for special permits or waivers of existing regulations.

While we generally support the draft proposal, we do have some concerns that we hope we can continue to discuss with committee staff. Areas of concern pertain to removal of all class location requirements; the limitation of certain special permit criteria; Oil Pollution Act violations and the need for additional enforcement authority. In particular, we oppose the use of the “knowingly and willfully” standard (used for criminal liability in 49 USC 60123) in the civil penalty section for regulatory code violations as it would potentially weaken our pipeline safety enforcement program.

CONCLUSION

In closing, we look forward to working with Congress to address any issues you may have concerning PHMSA’s pipeline safety program and the regulation of gas and hazardous liquid pipelines. PHMSA very much appreciates the opportunity to report on our oversight role of these pipelines and the opportunities that exist to strengthen oversight.