LEGISLATIVE SOLUTIONS TO MAKE OUR NATION'S PIPELINES SAFER

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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C O N T E N T S

[1] Mr. Flores presented Mr. Walden's statement orally.

LEGISLATIVE SOLUTIONS TO MAKE OUR NATION'S PIPELINES SAFER

WEDNESDAY, JUNE 19, 2019

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:33 a.m. in room 2322, Rayburn House Office Building, Hon. Bobby L. Rush (chairman of the subcommittee) presiding.

Members present: Representatives Rush, Peters, Doyle, McNerney, Tonko, Loebsack, Butterfield, Schrader, Kennedy, Veasey, Kuster, Barragán, O'Halleran, Blunt Rochester, Pallone (ex officio), Upton (subcommittee ranking member), Latta, Rodgers, Olson, Kinzinger, Griffith, Johnson, Bucshon, Flores, Walberg, Duncan, and Walden (ex officio).

Staff present: Jeffrey C. Carroll, Staff Director; Omar Guzman-Toro, Policy Analyst; Rick Kessler, Senior Advisor and Staff Director, Brendan Larkin, Policy Coordinator; Elysa Montfort, Press Secretary; Lisa Olson, FERC Detailee; Alivia Roberts, Press Assistant; Tuley Wright, Energy and Environment Policy Advisor; Mike Bloomquist, Minority Staff Director; Theresa Gambo, Minority Human Resources/Office Administrator; Peter Kielty, Minority General Counsel; Ryan Long, Minority Deputy Staff Director; Mary Martin, Minority Chief Counsel, Energy and Environment and Climate Change; Brandon Mooney, Minority Deputy Chief Counsel, Energy; Brannon Rains, Legislative Clerk; Peter Spencer, Minority Senior Professional Staff Member, Environment and Climate Change.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. Good morning to all.

I want to thank you all for attending today's important hearing entitled "Legislative Solutions to Make Our Nation's Pipelines Safer," and I want to welcome all of our witnesses that will be testifying, including some who are returning from our May oversight hearing.

This morning we will be examining the Safer Pipelines Act of 2019, as well as H.R. 2139, the Leonel Rondon Pipeline Safety Act, introduced by our colleagues from Massakchusetts: Ms. Trahan, Mr. Kennedy, and Mr. Moulton.

Additionally, Members may also inquire about provisions of the Pipeline Safety Legislative Proposal introduced earlier this month by PHMSA.

At the beginning, I want to be crystal clear. The discussion draft introduced by the majority side represents many provisions that Chairman Pallone, myself, and other Democratic colleagues would, ideally, like to see included in pipeline safety reauthorization.

However, as we have said time and time again, both Chairman Pallone and I would like for this process to be transparent, to be open, and we look forward to working with members of the minority, PHMSA, and other important stakeholders to ultimately draft legislation that will receive wider bipartisan support.

I hope that I am clear on this. We want to work with all the stakeholders and also with the minority side.

With that said, I would like to highlight some of the important provisions included in the discussion draft that I believe would make our Nation's pipeline infrastructure safer and more secure.

And one of the major components of the draft is that it would regulate many of the 435,000 miles of gathering lines, including all onshore pipelines operating above a specified pressure.

I believe this is a commonsense measure that would help to inform and protect communities surrounding these gathering lines, which are completely unregulated in today's environment.

The draft would also eliminate the, quote, "grandfather clause," end of quote, so that pipelines built prior to July 1, 1970 would no longer be exempt from testing for their maximum allowable operating pressure—another commonsense provision.

The bill would eliminate the duplicative cost-benefit requirements, which is currently only imposed on PHMSA and which is at least partly responsible for the agency missing so many of its deadlines for rulemakings, according to former Administrator Quarterman.

The legislation also mandates automatic leak detection and shut-off valves for pipelines located in high-consequence areas, a provision that should help to save vital time and potentially loss of life and property in the event of an accident.

I believe that each of these provisions, as well as additional measures, would help bring additional resources and critical operational information to communities and to first responders, as both the subcommittee discussion draft and H.R. 2139 does, and would help to strengthen our Nation's pipeline safety regime.

I look forward to engaging the witnesses and also the members of the minority and working with all of you to enhance this legislation as we move through the committee process.

[The legislation appears at the conclusion of the hearing. The prepared statement of Mr. Rush follows:]

PREPARED STATEMENT OF HON. BOBBY L. RUSH

I want to thank you all for attending today's important hearing entitled "Legislative Solutions to Make Our Nation's Pipelines Safer."

I want to welcome all of our witnesses that will be testifying, including some who are returning from our May oversight hearing.

This morning we will be examining the Safer Pipelines Act of 2019, as well as H.R. 2139, the "Leonel Rondon Pipeline Safety Act," introduced by our colleagues from Massachusetts: Mr. Trahan, Mr. Kennedy and Mr. Moulton.

Additionally, Members may also inquire about provisions of the Pipeline Safety Legislative Proposal introduced earlier this month by PHMSA.

I want to be clear right from the outset that the discussion draft introduced by the majority side represents many provisions that Chairman Pallone, myself and many Democratic colleagues would, ideally, like to see included in pipeline safety reauthorization.

However, as we have said on numerous occasions, both Chairman Pallone and I would like for this process to be transparent and open, and we look forward to working with Members of the minority, PHMSA and other important stakeholders to ultimately draft legislation that will receive wide, bipartisan support.

With that being said, I would like to highlight some of the important provisions included in the discussion draft that I believe would make our Nation's pipeline infrastructure safer and more secure.

One of the major components of the draft is that it would regulate many of the 435,000 miles of gathering lines, including all onshore pipelines operating above a specified pressure.

I believe this is a commonsense measure that would help to inform and protect communities surrounding these gathering lines, which today remain completely unregulated.

The draft would also eliminate the "grandfather clause" so that pipelines built prior to July 1, 1970, would no longer be exempt from testing for their maximum allowable operating pressure.

The bill would eliminate the duplicative cost-benefit requirements, which is currently only imposed on PHMSA, and which is at least partly responsible for the agency missing so many of its deadlines for rulemakings, according to former Administrator Quarterman.

The legislation also mandates automatic leak detection and shutoff valves for pipelines located in high consequence areas, a provision that should help save vital time and potentially loss of life and property in the event of an accident.

I believe that each of these provisions, as well as additional measures that would help bring additional resources and critical operational information to communities and first-responders, as both the subcommittee discussion draft and H.R. 2139 does, would help to strengthen our Nation's pipeline safety regime.

I look forward to engaging with today's witnesses on these proposals, and also working with my colleagues on the minority side to further enhance this legislation as we move through the committee process.

With that I yield the balance of my time, and now I would like to recognize my friend and colleague, Ranking Member Upton for his opening statement.

Mr. RUSH. With that, I yield my time back and I recognize my good friend from the great State of Michigan, Ranking Member Upton, for 5 minutes.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Well, thank you, Mr. Chairman, for holding this hearing to continue our work on pipeline safety reauthorization, and I look forward to your statement "working with all of us" because I am going to sound a little tough, probably, in my opening statement.

But I know that we can do better than this discussion draft before us.

Pipeline safety has always been one of my highest priorities in every Congress and I was encouraged and optimistic that we could work on this bill together as we have in the past.

In fact, if you look back at the history, I believe that when we passed previous reauthorizations, they passed under suspension, almost always with more than 400 votes if not by voice.

But up until now, we on this side of the aisle have been pretty much left out of that drafting process. The discussion draft before us reflects that.

In many respects, it appears that it will be more of a messaging bill than one that can truly advance safety practices and make it through the process and to the President to be signed before the end of September.

And to be frank, this bill, I don't think, has a ghost of a chance of going anywhere in the Senate, let alone getting signed by the President in the way—the shape and form that it is now.

So I know—I do know that we all share many of the same priorities when it comes to pipeline safety and we have worked together, and this is demonstrated by the strong bipartisan work that the committee produced the last time we reauthorized PHMSA and enacted real pipeline safety reform. We need to continue on those bipartisan practices.

So I urge you today to hit the button reset. Let us open the process up. Let us work together across the aisle rather than rushing this draft through the subcommittee.

Let us give PHMSA an opportunity to testify on their reauthorization proposal and provide us with the technical assistance on the drafting. So far, they have not done so.

We owe it to our constituents to have a more open and transparent process where all of the relevant stakeholders, particularly PHMSA, when they could have an opportunity to present their views on the reform proposals.

One, I believe that we have got to make sure that PHMSA and the States have the resources and the tools that they need to perform their pipeline safety responsibilities.

Second, we need to hold PHMSA's feet to the fire accountable for completing the outstanding congressional mandates and finishing the pending rulemakings left over from prior reauthorizations, absolutely.

And third, we need to make sure that PHMSA, State regulators, and pipeline operators are incorporating lessons learned from prior accidents, integrating new technologies and continue to improve on safety.

I am afraid that this draft falls short in several critical areas. For one, it appears that the draft could slow the pace of PHMSA's rulemaking by encouraging frivolous lawsuits that result in sue and settle agreements, potentially diverting agency resources from developing important safety regulations.

It could also lengthen the interagency review process by having PHMSA and OMB in complete rulemakings that fail to consider the full range of costs and benefits.

This draft may also have the unintended effect of weakening pipeline safety—not a good thing. Particularly concerned that the draft would arbitrarily mandate certain technologies such as automatic valves on liquid pipelines, which could lead to accidental pipeline ruptures when that liquid backs up.

This draft could also prohibit direct assessment of pipelines, which is a valuable method for evaluating and managing corrosion threats. The discussion draft may also divert PHMSA's limited resources by expanding its jurisdiction to include regulation of gathering lines, which are effectively managed at the State level today.

Finally, I am concerned that the draft does nothing to encourage innovation or the adoption of new pipeline safety technologies or safety processes.

It also fails to incentivize pipeline operators to voluntarily exceed minimum safety requirements. I don't think that the draft goes far enough to prevent cyber attacks, something we have all been worried about, and discourage bad actors from damaging pipeline facilities.

So, as we move forward, I plan to keep an open mind, especially given our history with pipeline safety and our good working excellent relationship.

But if we hit recess and take—excuse me, if we hit reset and take our time on this rather than speeding ahead to subcommittee markup next week, I think we will have a much better bill than what's before us today.

And with that, I yield back.

[The prepared statement of Mr. Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON

Thank you, Mr. Chairman for holding this hearing to continue our work on pipeline safety reauthorization. Pipeline safety is one of my highest priorities this Congress, and I had hoped we could work on this bill together. Unfortunately, up until now, Republicans have been left out of the drafting process.

The discussion draft before us today reflects this. In many respects, it appears to be more of a messaging bill than one that will truly advance safety practices and make it through the process and onto the President's desk. To be frank, this bill does not have a chance of passing the Senate and getting signed by the President.

Mr. Chairman, I believe we all share many of the same priorities when it comes to pipeline safety. This is demonstrated by the strong bi-partisan work this committee produced the last time we reauthorized PHMSA and enacted pipeline safety reforms. We should continue to build on those bi-partisan practices this time around.

I urge you to hit reset. Let's open this process up and work together across the aisle. Rather than rushing this draft through the subcommittee, let's give PHMSA an opportunity to testify on their reauthorization proposal and provide us with technical assistance on the drafting. We owe it to our constituents to have a more open and transparent process, where all the relevant stakeholders have an opportunity to present their views and reform proposals. I have three main goals for reauthorization:

First, I believe that we need to make sure that PHMSA and the States have the resources and the tools they need to perform their pipeline safety responsibilities.

Second, we need to hold PHMSA accountable for completing the outstanding Congressional mandates and finishing the pending rulemakings leftover from prior reauthorizations.

Third, we need to ensure that PHSMA, State regulators, and pipeline operators are incorporating lessons-learned from prior accidents, integrating new technologies, and continuing to improve safety.

I am afraid the discussion draft before us today falls short in several critical areas. For one, it appears that the draft could slow the pace of PHMSA's rulemakings by encouraging frivolous lawsuits that result in sue and settle agreements, potentially diverting agency resources from developing important safety regulations. It could also lengthen the interagency review process by having PHMSA send OMB incomplete rulemakings that fail to consider the full range of costs and benefits.

The discussion draft may also have the unintended effect of weakening pipeline safety. I am particularly concerned that the draft would arbitrarily mandate certain technologies, such as automatic valves on liquid pipelines, which could lead to accidental pipeline ruptures. The draft would also prohibit direct assessment of pipelines, which is a valuable method for evaluating and managing corrosion threats. The discussion draft may also divert PHMSA's limited resources by expanding its jurisdiction to include regulation of gathering lines, which are effectively managed at the State level today.

Finally, I am concerned the draft does nothing to encourage innovation or the adoption of new pipeline safety technologies or safety processes. It also fails to incentivize pipeline operators to voluntarily exceed minimum safety requirements. I also don't think the draft goes far enough to prevent cyber attacks and discourage bad actors from damaging pipeline facilities.

As we move ahead, I plan to keep an open mind, especially given our history with pipeline safety, and our good working relationship. I hope that after today we can hit "reset" and take our time on this, rather than speeding ahead to a subcommittee markup next week. This is such an important issue and it has historically been a fully bipartisan process.

With that, I look forward to the testimony of our witnesses and working closely with you in the weeks ahead. Thank you, I yield back.

Mr. RUSH. I thought you were my friend.

[Laughter.]

Mr. UPTON. My buddy.

Mr. RUSH. The Chair now recognizes the chairman of the full committee, Mr. Pallone, for 5 minutes.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman.

Today's hearing focuses on two legislative proposals to improve pipeline safety in America. In May, the subcommittee held an oversight hearing to hear from stakeholders about what changes are needed as we consider reauthorization of the Pipeline Safety Act.

Since we last reauthorized this critical Federal program—3 years ago this week—several major pipeline incidents have occurred, underscoring the need for additional reforms to our Federal pipeline safety programs.

Last year, a failure in Massachusetts' Merrimack Valley killed one person, injured 21 others, and damaged more than 130 homes.

We have made progress on Federal pipeline safety over the last 20 years, since the Olympic gasoline pipeline explosion in Bellingham, Washington, killed three young people.

But preventable incidents still occur and we must do everything in our power to ensure our national pipeline network is as safe as possible.

The Safer Pipelines Act of 2019, a discussion draft the subcommittee will review today, makes several critical changes to the Federal pipeline safety program.

A major overarching problem with the Federal pipeline safety program is that it takes the Pipeline and Hazardous Materials Safety Administration—PHMSA—too long to finalize congressional mandates.

There are still outstanding rulemakings that were required in 2011 and 2016 reauthorizations that PHMSA has failed to finish, and this is unacceptable.

At our oversight hearing in May, we heard that the biggest cause for delay is the prescriptive cost-benefit analysis required by the 1996 reauthorization.

The discussion draft removes this duplicative requirement while still ensuring PHMSA rules are subject to the same economic analysis that every other major rule receives.

The proposal also restores the mechanism for citizens to pursue legal action to compel PHMSA to fulfill its statutory duties, which

was a major issue in the aftermath of the 2010 San Bruno pipeline explosion that killed eight people in Northern California.

San Francisco sued the Federal Government for having abjectly failed to enforce safety standards. But the suit was dismissed because the court held that the law did not permit mandamus-type citizen suits.

Another critical area addressed in the discussion draft is the need for modifying the ridiculously high bar for imposing criminal penalties in current law.

The proposal changes the standard to "knowingly or recklessly," which would bring the pipeline criminal standard in line with that of the Hazmat statute.

The Government must be able to hold companies accountable when they knowingly or recklessly ignore the law.

The Trump administration has submitted its own reauthorization proposal, which includes a provision to criminalize pipeline construction protests.

I have no intention of allowing a pipeline safety bill to be used as a vehicle for stifling legitimate dissent and protest. That provision is dead on arrival as far as I am concerned.

There are, however, a number of useful ideas within the administration's proposal and I look forward to working with my colleagues and the Department of Transportation to find common ground on these issues.

The subcommittee will also review the Leonel Rondon Pipeline Safety Act, introduced by Representatives Trahan, Kennedy, and Moulton. This bill is a direct response to the failures that occurred during the Merrimack Valley incident in Massachusetts and it would improve the management of gas pipeline distribution systems and fix gaps in safety regulations that led to the tragedy in Massachusetts.

I commend the bill sponsors for their thoughtful effort and I am hopeful we can include several ideas from their proposal in a final pipeline safety reauthorization bill.

The ideas included in the Safer Pipelines Act are important to me and to communities around the country. But this is a draft and serves as a starting point for discussion and collaboration, just as this hearing is a means to get all ideas for reauthorization out into the open and onto the table.

So I look forward to hearing from my committee colleagues on both sides of the aisle today on their ideas for reauthorization because I hope and expect that the final product the committee reports will be a strong bipartisan bill and I am committed to working in a bipartisan manner to update and improve this critical Federal program so that we can produce a final bill that we can all be proud of and, obviously, gets passed in the Senate and signed by the President.

So thank you, Mr. Chairman. I yield back.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Today's hearing focuses on two legislative proposals to improve pipeline safety in America. In May, the subcommittee held an oversight hearing to hear from stake-

holders about what changes are needed as we consider reauthorization of the Pipeline Safety Act.

Since we last reauthorized this critical Federal program—3 years ago this week—several major pipeline incidents have occurred, underscoring the need for additional reforms to our Federal pipeline safety programs. Last year, a failure in Massachusetts' Merrimack Valley killed one person, injured 21 others and damaged more than 130 homes.

We have made progress on Federal pipeline safety over the last 20 years, since the Olympic Gasoline Pipeline explosion in Bellingham, Washington, killed three young people. But preventable incidents still occur, and we must do everything in our power to ensure our national pipeline network is as safe as possible.

The Safer Pipelines Act of 2019, a discussion draft the subcommittee will review today, makes several critical changes to the Federal pipeline safety program. A major, overarching problem with the Federal pipeline safety program is that it takes the Pipeline and Hazardous Materials Safety Administration (PHMSA, FIM-zuh) too long to finalize Congressional mandates. There are still outstanding rulemakings that were required in the 2011 and 2016 reauthorizations that PHMSA has failed to finish. This is unacceptable. At our oversight hearing in May, we heard that the biggest cause for delay is the prescriptive cost-benefit analysis required by the 1996 reauthorization. The discussion draft removes this duplicative requirement, while still ensuring PHMSA rules are subject to the same economic analysis that every other major rule receives.

The proposal also restores the mechanism for citizens to pursue legal action to compel PHMSA to fulfill its statutory duties, which was a major issue in the aftermath of the 2010 San Bruno pipeline explosion that killed eight people in Northern California. San Francisco sued the Federal Government for having abjectly failed to enforce safety standards, but the suit was dismissed because the court held that the law did not permit mandamus-type citizen suits.

Another critical area addressed in the discussion draft is the need for modifying the ridiculously high bar for imposing criminal penalties in current law. The proposal changes the standard to "knowingly or recklessly," which would bring the pipeline criminal standard in line with that of the Hazmat statute. The Government must be able to hold companies accountable when they knowingly or recklessly ignore the law.

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Mr. RUSH. The gentleman yields back.

The Chair now recognizes Mr. Flores, who is going to read the statement of the ranking member, Mr. Walden.

Mr. Flores, you're recognized for 5 minutes.

[Whereupon Mr. Flores read Mr. Walden's statement.]

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. FLORES. Thank you, Mr. Chairman.

The committee's work to reauthorize and modernize the Nation's pipeline safety program is important and deserves close, careful, and bipartisan attention.

This is the hallmark of this committee's work, especially when it comes to safety-related legislation. While it looked like that we were on the right track a month ago, we haven't made much progress since then.

In part, I think this is because we have not been adhering completely to our past bipartisan practices. Judging by the discussion draft before us today, it appears that the Democrats have chosen to go along up until this point, releasing a partisan draft, and that on our initial read it requires a lot of work.

Mr. Chairman, Members deserve the ability to gather the views of all relevant stakeholders and to understand the full impact of legislation before voting on it.

The discussion draft before us today was only released last week, and the process was so rushed that, as I understand it, PHMSA didn't have time to prepare testimony.

While we were fortunate to have PHMSA testify back in May, it has come to my attention that our Members' questions for the record still have not been submitted. This is over 6 weeks later.

So here we are today with many unanswered questions for PHMSA and facing the prospect of a subcommittee markup next week.

Mr. Chairman, as you know, pipeline safety reauthorization has, historically, been a fully bipartisan process. Under the Republican majority, Democrats and Republicans sat down together to work through the issues and to draft a bill.

I am disappointed that more than a month has gone by and we still have nothing to show for it. As we move ahead, I hope that we can get a commitment to slow down and work together.

While we may not agree on everything, I believe that there are many areas where we can strengthen the law to drive innovation and to improve safety.

First and foremost, we should recognize that pipeline safety is a shared responsibility between PHMSA, the States, and pipeline operators.

There's a lot that Congress can do to encourage pipeline operators to improve their performance. However, I have serious concerns over the discussion draft's one-size-fits-all approach and overly prescriptive mandates.

This administration inherited a number of missed deadlines for pipeline safety rulemakings from the prior administration. However, PHMSA officials have worked hard and have made substantial progress in this regard.

Certain impacts from this discussion draft actually could delay these important rulemakings to improve safety and to bog down the process even further. This does not serve the public interest.

While it can be tempting, we should not get too far ahead of ourselves. Congress should recognize and account for the safety im-

provements that will be implemented through the outstanding congressional mandates in the pending rulemakings.

PHMSA is making progress on several important regulations addressing hazardous liquid pipelines, gas pipelines, valve and rupture protection, and plastic pipes, among other regulatory actions.

Together, these rules represent many years of work and we should not pull out the rug and disrupt the progress by injecting more regulatory uncertainty.

Our reauthorization bill should reflect this reality by continuing to encourage a cooperative flexible approach to pipeline safety.

We should make sure that PHMSA and the States have adequate resources to inspect and protect the Nation's pipeline system. We should hold PHMSA accountable for completing overdue rulemakings. And finally, we should encourage pipeline operators to adopt new technologies and to continue to improve safety.

With this, Mr. Chairman, thank you for holding this hearing, and I look forward to hearing the testimony of the witnesses.

I yield back the balance of my time.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

The committee's work to reauthorize and modernize the Nation's pipeline safety program is important and deserves close, careful, and bi-partisan attention. This is the hallmark of the committee's work, especially when it comes to safety related legislation.

While it looked like we were on the right track a month ago, we haven't made much progress since then. In part, I think this is because we have not been adhering completely to our past bipartisan practices. Judging by the discussion draft before us today, it appears that the Democrats have chosen to go it alone up until this point, releasing a partisan draft that on our initial read requires a lot of work.

Mr. Chairman, Members deserve the ability to gather the views of all relevant stakeholders and understand the full impact of legislation before voting on it. The discussion draft before us today was only released last week, and the process was so rushed that, as I understand it, PHMSA didn't have time to prepare testimony.

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Mr. Chairman, as you know, pipeline safety reauthorization has historically been a fully bipartisan process. Under the Republican majority, Democrats and Republicans sat down together to work through the issues and draft a bill. I am disappointed that a month has gone by and we have nothing to show for it.

As we move ahead, I hope that we can get a commitment to slow down and work together. While we may not agree on everything, I believe there are many areas where we can strengthen the law to drive innovation and improve safety.

First and foremost, we should recognize that pipeline safety is a shared responsibility between PHMSA, the States, and pipeline operators. There is a lot Congress can do to encourage pipeline operators to improve their performance; however, I have serious concerns by the discussion draft's "one size fits all" approach and overly prescriptive mandates.

This administration inherited a number of missed deadlines for pipeline safety rulemakings; however, PHMSA officials have worked hard and made substantial progress. Certain impacts from this discussion draft actually could delay these important rulemakings to improve safety and bog down the process even further. This will not serve the public interest.

While it can be tempting, we should not get too far ahead of ourselves. Congress should recognize and account for the safety improvements that will be implemented through the outstanding congressional mandates and pending rulemakings.

PHMSA is making progress on several important regulations addressing hazardous liquid pipelines, gas pipelines, valve and rupture protection, and plastic pipes, among other regulatory actions. Together, these rules represent many years

of work, and we should not pull out the rug and disrupt the progress by injecting more regulatory uncertainty.

Our reauthorization bill should reflect this reality by continuing to encourage a cooperative, flexible approach to pipeline safety. We should make sure PHMSA and States have adequate resources to inspect and protect the Nation's pipeline system; we should hold PHMSA accountable for completing overdue rulemakings; and finally, we should encourage pipeline operators to adopt new technologies and continue to improve safety.

With that, Mr. Chairman, thank you for holding this hearing and I look forward to the testimony of the witnesses. I yield back the balance of my time.

Mr. RUSH. The gentleman yields back.

The Chair would like to remind Members that, pursuant to committee rules, all Members' written opening statement shall be made part of the record.

I would like to now introduce our panel of witnesses for today's hearing.

On my left is Ms. Christina Sames, the vice president of operations and engineering, of the American Gas Association. Next to her is Mr. Chuck Lesniak, the principal of CL3 Consulting, on behalf of the Pipeline Safety Trust.

Next to Mr. Lesniak is Mr. Andrew Black. Mr. Black is the president and CEO of the Association of Oil Pipe Lines. And last but not least is Mr. Christopher "C.J." Osman. He is the director of operations, safety, and integrity of the—for the Interstate Natural Gas Association of America.

We want to thank all of our witnesses for joining us today and we look forward to your testimony. At this time, the Chair will now recognize each witness for 5 minutes to provide their opening statement.

But let me caution you before we begin. I want to explain this lighting system. There is a system here, you know. In front of you is a series of lights. The light will initially be green at the start of your opening statement.

The light will turn yellow when you have 1 minute remaining, and please begin to wrap up your statement at that point. The light will turn red when your time expires.

If you continue, then we will put you over in the corner with a dunce cap on.

[Laughter.]

Mr. RUSH. Ms. Sames, you are now recognized for 5 minutes for the purposes of an opening statement.

STATEMENTS OF CHRISTINA SAMES, VICE PRESIDENT, OPERATIONS AND ENGINEERING SERVICES, AMERICAN GAS ASSOCIATION; CHUCK LESNIAK III, PRINCIPAL, CL3 CONSULTING; ANDREW J. BLACK, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF OIL PIPE LINES; C.J. OSMAN, DIRECTOR OF OPERATIONS, SAFETY, AND INTEGRITY, INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA

STATEMENT OF CHRISTINA SAMES

Ms. SAMES. And I don't want to be put in the corner.

So, Chairman Rush, Ranking Member Upton, and members of the subcommittee, I am Christina Sames, vice president of operations and engineering at the American Gas Association.

Prior to AGA, I worked at Pipeline Research Council International and spent 12 years at PHMSA, where I worked to advance pipeline safety initiatives.

AGA represents more than 200 local energy companies that deliver natural gas to 74 million customers. The gas utilities distribution pipelines are the final link in the delivery chain that brings natural gas from the well head to the burner tip.

AGA member employees live in the communities that they serve, interact daily with the customers and State regulators who oversee pipeline safety locally.

Safety is at the very core of AGA and its members, and we go well beyond regulations to improve pipeline safety. We take pride in the overall safety performance but recent incidents are a painful reminder we must continue to raise the bar on safety. Any incident is one incident too many.

The industry is supportive of flexible, risk-based, and practical improvements to pipeline safety that reflect lessons learned from past pipeline incidents.

There's little in the House Energy and Commerce bill that accomplishes that particular goal. For example, the proposed legislation removes the requirement that regulations be reasonable or cost effective.

The cost-benefit analysis was mandated to ensure that regulations do not put an undue burden on customers that bear the cost of mandates without a measurable improvement to the safe delivery of natural gas. That's logical, and should continue as the criteria for developing regulations.

There are other provisions in the Energy and Commerce bill and the Markey-Trahan bill that do not appear to improve pipeline safety. For example, eliminating the use of direct assessment, a tool that not only determines that corrosion has occurred but it is predictive and indicates where corrosion could occur.

That should be allowed to be continued. Requiring operators to send integrity management plans, operation and maintenance manuals, pipeline characteristics, and many other documents to emergency responders.

In my discussions over the years with first responders, their concerns have centered around getting way too much information that sits on the shelf. They want condensed, meaningful, and understandable information.

Increasing civil penalties, expanding criminal liability to include recklessness, and adding a provision that encourages litigation against PHMSA will do little to improve pipeline safety.

Core to a strong safety culture is encouraging self-disclosure within a company and with the regulators. A more productive alternative would be to encourage voluntary sharing of safety issues as proposed by the administration bill.

AGA is supportive of actually many of the provisions in the administration's bill, including the safety incentives program that encourages companies to exceed regulations, pipeline safety pilot programs for technology advances, and criminal penalties for those that damage, destroy, vandalize, or otherwise disrupt operation and create pipeline safety issues.

During the pipeline safety reauthorization process, AGA asks the subcommittee to consider four high-level priorities.

One, preserve industry's engagement in pipeline safety rulemaking by upholding PHMSA's regulatory process.

Two, provide support, flexibility, and regulations by recognizing that gas distribution systems differ, and avoid one-size-fits-all prescriptive regulations.

Three, don't obstruct pipeline safety replacement programs at the State level via new mandates that delay replacements or require replacements faster than work can be accomplished safely, reliably, and without compromising quality.

And four, focus on provisions that improve pipeline safety by avoiding extraneous legal, regulatory, and administrative provisions that really hamper the regulatory process.

Our full statement covers a number of pipeline safety reauthorization topics. I would like to reiterate industry's commitment to safety. Public safety, worker safety, and pipeline safety are all core values that affect everything that we do and how we do it.

We know that without safety nothing else matters.

Thank you for the opportunity to participate in this hearing and I look forward to your questions.

[The prepared statement of Ms. Sames follows:]

Statement of Christina Sames
Vice President, Operations and Engineering Services
American Gas Association

Subcommittee on Energy
Committee on Energy and Commerce
United States House of Representatives

Legislative Solutions to Make Our Nation's Pipelines Safer

June 19, 2019

The American Gas Association (AGA) is pleased to provide this statement for the hearing record for the Subcommittee on Energy's June 19th hearing on *Legislative Solutions to Make Our Nation's Pipelines Safer*. AGA shares the same goals as safety advocates, the public, industry partners and Congress: Ensuring that America's pipeline system remains the safest, most secure, most reliable in the world. We look forward to working closely with the Energy and Commerce Committee on pipeline safety reauthorization legislation to help achieve these goals.

About the American Gas Association

AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 74 million residential, commercial and industrial natural gas customers in the U.S., of which 95 percent - nearly 71 million customers receive their gas from AGA members. Natural gas pipelines, which transport approximately one-fourth of the energy consumed in the United States, are an essential part of the nation's infrastructure. Indeed, natural gas is delivered to customers through a safe, 2.5-million-mile underground pipeline system. This includes 2.2 million miles of local utility distribution pipelines and 300,000 miles of transmission pipelines that stretch across the country, providing service to more than 177 million Americans.

Our Number One Priority: Pipeline Safety

Distribution pipelines are operated by natural gas utilities, sometimes called "local distribution companies" or LDCs. The gas utility's distribution pipes are the last, critical link in the natural gas delivery chain that brings natural gas from the wellhead to the burner tip. As such, gas utilities are effectively the "face of the gas industry." AGA member companies are embedded in the communities they serve and interact daily with customers and with the state regulators who oversee pipeline safety locally. The distribution industry takes very seriously the responsibility of continuing to deliver natural gas to our families, neighbors, and business partners as safely, reliably, and responsibly as possible.

The domestic shale revolution has resulted in an abundant supply of clean, affordable, domestically produced natural gas. In turn, robust supply has translated into stable natural gas prices and an increasing number of utility customers who use this resource for residential and commercial applications like cooking, space and water heating. Alongside this tremendous opportunity comes the absolute necessity of operating safe and reliable pipeline infrastructure to help ensure dependable natural gas delivery. Unquestionably, pipeline safety is our industry's number one priority, and through critical partnerships with state and federal regulators, legislators, and other stakeholders to constantly improve pipeline safety, gas utilities continue to advance system integrity and provide increased access to natural gas service for homes and businesses nationwide.

Through the decades, a variety of materials have been used to make natural gas pipelines. The selection of materials has varied based on the date the pipeline was placed in service, the diameter and pressurization requirements of the pipeline and the characteristics of the local terrain. For much of the 20th century, cast iron was the choice for many utility systems because of its excellent resistance to corrosion. In the 1950s, steel replaced cast iron as the material of choice, mainly because of steel's flexibility and strength. There was a higher risk of corrosion with steel pipes, so many of the pipes had protective coating added and "cathodic" protection systems installed with the pipe to protect against corrosion. During the past 30 years, however, plastic pipe has predominated in gas utility distribution systems. Plastic pipe provides increased safety and integrity to pipeline infrastructure because it is resistant to corrosion, flexible, and may even be able to be installed in an existing pipeline. Since 2007, nearly 12,000 miles of cast iron main, 15,000 cast iron services, and over 20,000 miles of "bare" steel pipe have been replaced by plastic pipe.

Operators predominantly use "Distribution Integrity Management Programs," (DIMP) to manage systems that consist of many different types of pipe, of different ages, at different pressures and in different environments. DIMP is a comprehensive regulation that provides an added layer of protection to the prescriptive federal regulations that have been in place since the 1970s, the state regulations that go beyond federal regulations, and the voluntary safety programs being implemented by local distribution companies. DIMP takes into consideration the wide differences that exist between natural gas distribution operators and allows operators to develop a DIMP plan that is appropriate for the operating characteristics of their distribution delivery system and the customers that they serve.

DIMP requires the following by all distribution operators, regardless of size:

- Understand their system (design, material, operating conditions, environment, maintenance and operating history, etc.)
- Manage the threats that could affect the integrity of the system (excavation damage, corrosion, potential for natural force damage, material defects, fitting failure, etc.)
- Assess and priority risks
- Identify and implement appropriate measures to mitigate risks
- Measure performance, monitor results, and evaluate the effectiveness of its programs, making changes where needed
- Periodically report performance measure to regulators

The use of DIMP helps operators prioritize replacement work and other measures that strengthen the gas system. Upgrading the nation's pipeline system is just one of many steps that are being taken to fulfill the industry commitment to safety. Pipeline replacement projects have been a joint initiative between the industry, state regulators and commissioners, and the U.S. Department of Transportation's Pipeline & Hazardous Materials Safety Administration (PHMSA). Currently, 43 states and the District of Columbia have established innovative rate mechanisms that allow operators to replace pipe faster. In the past 20 years, due to these efforts, the amount of cast iron pipelines in use has declined by approximately 52 percent, and the amount of cathodically unprotected and bare steel pipelines has decreased by approximately 46 percent. These systems have been replaced by modern plastic pipelines which provide increased gas utility system safety, resiliency and affordability to communities.

With 630,000 new natural gas utility customers being added every year, we are committed to meeting that increased demand with the safest pipeline infrastructure available. Since 1990, the use of modern plastic pipelines has increased by over 200 percent. Today, plastic pipe makes up 58 percent of the nation's natural gas distribution main and 74 percent of the gas service line infrastructure. Cathodically protected and coated steel make up another 35 percent of the nation's natural gas distribution main and 19 percent of the gas service line infrastructure.

Safety is a joint effort which engages customers, regulators, and policymakers at every level. We are committed to this partnership and our member companies proactively work with federal and state regulators, public officials, emergency responders, excavators, consumers, safety advocates, and the public to continue improving the industry's natural gas distribution pipeline system. Our nation's natural gas utilities invest nearly $50,000 every minute into enhancing the safety of natural gas distribution and transmission systems. Furthermore, AGA and its member companies have adopted a *Commitment to Enhancing Safety* (Attachment 2). This commitment identifies actions, beyond regulation, to improve safety, and underscores the actions our member companies are taking every day to help ensure that America's 2.2 million miles of natural gas distribution pipeline operate safely and reliably.

Industry's Demonstrated Commitment to Safety

The natural gas distribution industry has demonstrated that it can increase the delivery of natural gas while continuously making improvements in safety. PHMSA data shows that significant distribution incidents, those that result in a death, injury or property damage of greater than $50,000, and serious incidents, those that result in a death or injury, have declined over the past 20 years. Significant incidents have declined 16 percent and serious incidents have declined 35 percent. Notably, the primarily cause of these incidents is excavation damage, which accounted for 38 percent and 27 percent of significant and serious incidents respectively in 2018. The April 10, 2019, incident in Durham, NC, which resulted in two deaths and 25 injuries was the result of third-party excavation damage.

While we have seen improvements, clearly more needs to be done. One incident is one too many. The National Transportation Safety Board (NTSB) is still investigating the tragic incident that occurred on September 13, 2018, in the Merrimack Valley in Massachusetts, but has stated the incident was due to an over-pressurization of a low-pressure natural gas distribution system.

Following the Merrimack Valley incident, AGA and the industry took quick action based on known information including:

- Holding conference calls to brief members and key stakeholders on what was publicly known about the incident
- Issuing a survey to its members to gather practices in place that are intended to prevent over-pressurization
- Collecting information from a variety of sources including technical publications and industry experts
- Holding a roundtable of several hundred operators/service providers to review the practices submitted and gather additional options to prevent over-pressurization
- Bringing together subject matter experts from over 30 companies to analyze the cumulative results and identify leading practices

Using this information, AGA and its members developed a white paper: *Leading Practices to Reduce the Possibility of a Natural Gas Over-Pressurization Event*[1], which was issued just two and a half months after the incident. We have made this white paper widely available, sharing it with AGA members and other parts of the industry, including PHMSA, the NTSB, state regulators and public representatives such as the Pipeline Safety Trust.

Following the incident, AGA also formed a new Board-level Task Force focused on Safety, Resilience, Reliability, and Security. The Task Force is looking at what actions beyond our current leading practices are needed to raise the bar in these key areas. Most recently, the AGA Board approved a resolution for all AGA member companies to implement Pipeline Safety Management Systems or API RP1173 within the next 3 years.

AGA also held a Crisis Leadership Summit in April. The Summit included a half day workshop conducted by the NTSB focused on its family assistance operations and how pipeline operators can work collaboratively with the broader response community to meet the needs of affected individuals and

[1] Leading Practices to Reduce the Possibility of a Natural Gas Over-pressurization Event (November 26, 2018) at https://www.aga.org/globalassets/safety-and-operations-member-resources/leading-practices-to-prevent-over-pressurization-final.pdf

communities. The Summit also included case studies and presentations on crisis readiness, internal preparation and coordination, stakeholder engagement, lessons learned from significant events and mutual assistance. AGA will also hold a similar workshop in June.

Finally, to address the NTSB recommendation following the Merrimack Valley incident that operators have certain documents or plans sealed by a professional engineer prior to commencing work, AGA created a white paper *Skills and Experience for Effectively Designing Natural Gas Systems*[2]. The purpose of this document is to provide guidance to operators on how to develop, maintain, and enhance the key technical competencies required to safely and effectively perform engineering work functions for natural gas systems. AGA plans to incorporate NTSB comments on the white paper for a first revision to ensure it captures NTSB intention.

AGA Supports Reasonable and Practicable Regulations

AGA supports reasonable and practicable federal regulations that improve pipeline safety. Further, AGA supports recommendations from the NTSB that are reasonable, applicable and reflect stakeholder input. AGA also supports relevant recommendations from the U.S. Department of Transportation Inspector General, Government Accountability Office, National Association of Pipeline Safety Representatives (NAPSR) and the National Association of Regulatory Utility Commissioners (NARUC). In addition, per an agreement with the federal government, state public utility commissions are empowered by statute to direct and enforce safety standards for pipeline facilities and to regulate the safety practices of LDCs. Public utility commissions enforce federal safety standards as they relate to design, installation, operation, inspection, testing, construction, extension, replacement and maintenance of pipeline facilities. State public utility commissions may also prescribe additional standards, beyond those set by the Federal government, provided they are not in conflict.

Raising the Bar on Safety

AGA and its members' safety efforts go far beyond regulation and are driven by our dedication to the continued enhancement of pipeline safety. In fact, AGA's board adopted AGA's *Commitment to Enhancing Safety,* a public declaration that LDC's are committed to proactively collaborating with federal and state officials, emergency responders, excavators, consumers, safety advocates and the public to continue improving the industry's longstanding record of providing natural gas service safely, reliably and efficiently. This document also reflects LDCs' willingness to make safety an intrinsic part of their core business functions, including pipeline design and construction, operations, maintenance and training, as well as more public facing programs like workforce development, pipeline planning stakeholder engagement, and first responder outreach. While these business activities will vary with each operator, it is the consensus of AGA members that implementing these priorities will help enhance pipeline safety, improve gas utility operations, reduce greenhouse gas emissions and provide better public accountability.

AGA's members also participate in peer reviews, benchmarking activities, the development of publications, and industry events that allow for the sharing of leading practices. This includes but is not limited to the following:

- The AGA Peer Review and Gas Utility Operations Best Practices Programs are voluntary safety and operational practice programs that allow local natural gas utilities throughout the nation to

[2] Skills and Experience for Effectively Designing Natural Gas Systems (April 8, 2019) at https://www.aga.org/contentassets/2ebcf84d71484f89a1b30dd26f1721ef/skills-and-experience-for- effectively-designing-ng-systems_final.pdf

observe their peers, share leading safety practices and identify opportunities to better serve customers and communities

- AGA and its members have developed hundreds of technical publications to assist operators. Two of the more recent publications are, *Leading Practices to Reduce the Possibility of a Natural Gas Over-Pressurization Event*[3] and *Guidelines to Understanding Pipeline Safety Management Systems* (Attachment 3*)*
- AGA's 2019 spring committee meetings, Operations Conference and Exhibition included nearly 20 technical committee meetings, more than 180 speakers, over 275 exhibitors, and more than 2800 attendees, all focused on the sharing of technical knowledge, ideas and practices to promote the safe, reliable, and cost-effective delivery of natural gas to homes and businesses across the country

PIPELINE SAFETY ACT REAUTHORIZATION PRIORITIES

AGA and its members support reasonable, flexible, risk-based, and practicable updates to pipeline safety regulation that build upon lessons learned and evolving improvements to safety and pipeline technology. Following this path leads to the sort of regulatory certainty our industry needs to better serve our customers. AGA asks the subcommittee to consider four high-level principles when drafting reauthorization legislation:

(1) Preserve Industry Engagement in Pipeline Safety Rulemaking. Reauthorization legislation should avoid legislative prescription and uphold the PHMSA regulatory process which allows all stakeholders a role in developing new safety regulations. Integral to PHMSA's pipeline safety rulemaking capability is the role the Gas Pipeline Advisory Committee (GPAC) plays in providing stakeholders a better understanding of the goals of proposed regulations by allowing them to ask questions, provide input, offer alternate regulatory language when the proposed language fails to meet intended goals, and come to consensus on final rules that are technically feasible, reasonable, cost effective and practicable.

(2) Support Appropriate Flexibility in Rulemaking. Any new rule authorized by pipeline safety reauthorization legislation should recognize that every pipeline distribution system is different in terms of design, use, age, materials, location, external risks, operating history and current operating conditions. Therefore, efforts to reduce risk in one system may not work in a different system. Any new safety rulemaking should recognize the differences between systems and avoid one-size-fits-all safety equipment or process mandates. Due to the distinct differences amongst distribution systems, prescriptive regulations may result in mis-prioritization of safety risks.

(3) Don't Obstruct Ongoing Pipeline Replacement Programs. Due in large part to active support by gas LDCs and other pipeline safety advocates, 43 states and the District of Columbia have implemented pipeline replacement programs either via legislation or regulation. These replacement programs offer the public continuously improving pipeline safety, environmental benefits, and more cost effective and consumer friendly gas utility operations. Reauthorization legislation should not saddle effective state replacement and upgrade programs with counterproductive new federal mandates that delay these replacements or require replacement faster than that work can be safely, and cost effectively, accomplished.

(4) Provisions Should Focus on Improving Pipeline Safety. Pipeline safety reauthorization should focus on provisions that have a direct nexus to improving pipeline safety and related government and industry programs and avoid extraneous legal, regulatory and administrative provisions that hamper the PHMSA regulatory process or increase the possibility of pipeline safety litigation.

[3] *Leading Practices to Reduce the Possibility of a Natural Gas Over-pressurization Event* (November 26, 2018)

AGA intends to leverage the substantial operations and engineering expertise of our more than 200 natural gas member companies to assist Congress in producing practical pipeline safety reauthorization legislation that reflects solid engineering principles and operational realities. To that end, we offer the following comments on a number of issues we anticipate will come up during the debate:

Cost-Benefit Analysis Requirements are Necessary in Rulemaking

Under current law, a cost-benefit analysis must be conducted during the PHMSA rulemaking process. The current requirements promote effective, reasonable, transparent and legally-sound regulations. A cost-benefit analysis provision helps gain consensus on regulations, rather than delay rulemakings. The clear and specific requirements in the Pipeline Safety Act lead to regulations that are more effective and legally sound, with a greater likelihood that PHMSA's rulemakings will survive any legal challenge to the sufficiency of the analysis.

AGA believes that the role PHMSA's Gas Pipeline Advisory Committee (GPAC) plays in subjecting rulemakings to cost benefit analysis is integral to PHMSA's pipeline safety rulemaking capability. Overall, AGA opposes making operational changes to GPAC activities as a method for streamlining the regulatory process. In fact, we believe the PAC process speeds up rulemaking since it provides final rules that have been vetted by industry, other government agencies, and the public for technical feasibility and practicability. Recent interim final rules where PHMSA deviated from the process have resulted in litigation or stays of enforcement to correct issues missed due to the lack of GPAC involvement. Specifically, we oppose eliminating the GPAC cost-benefit analysis for two reasons. First, from a process perspective, none of the recent regulations that failed to meet legislative deadlines were delayed due to the cost-benefit analysis process. More importantly, cost-benefit analysis serves to protect consumers because regulatory costs are ultimately borne by industry customers.

Traceable, Reliable, and Complete Distribution Records Requirements

Not all records are equal in importance. Data that does not advance pipeline safety should not be managed with the same rigor as data that is essential for pipeline safety. AGA supports traceable, reliable, and complete record requirements for essential records for new or fully replaced distribution pipelines.

Performing a Pressure Test is One of Six Viable Methods to Verify the Maximum Allowable Operating Pressure (MAOP) of a Transmission Pipeline

The House Energy and Commerce Committee's draft legislation proposes to limit operators to one method for reconfirming the MAOP of a transmission pipeline. During the Gas Pipeline Advisory Committee (GPAC) meetings for *The Safety of Gas Transmission and Gathering Lines Rulemaking*, five additional methods were identified and voted on by the GPAC as appropriate methods for reconfirming MAOP. AGA supports the use of all six methods as practicable solutions for reconfirming MAOP wherever required.

Additionally, AGA and its members have concerns with requiring operators to perform a spike test to reconfirm MAOP for segments already in operation. A spike test exposes pipe to pressures higher than what the pipe experienced during testing at the mill and well above the pressure at which it will ever operate. Industry experts know that spike tests are an integrity management tool used for the narrow option of proving the stability of specific material-related anomalies (including cracks). However, spike tests are **not** appropriate to reconfirm pipeline MAOP. Spike tests must be used selectively in the right

circumstances; otherwise they jeopardize the integrity of the pipeline and could cause it to fail.

Direct Assessment is a Viable and Effective Method for Performing Integrity Assessments to Manage the threat of Corrosion

The House Energy and Commerce Committee's draft legislation proposes to eliminate the use of Direct Assessment (DA) as a method for performing integrity assessments on transmission pipelines. DA is a proven methodology used to identify pipeline defects caused by external corrosion, internal corrosion, or stress corrosion cracking. This type of integrity assessment is used by operators, predominantly for transmission pipelines unable to be assessed by an In-Line-Inspection (ILI) tool. The value of DA is that the pipeline does not have to be taken out of service and it provides the operator with a forward-looking view of conditions that can lead to corrosion. In comparison, ILI can only indicate areas where corrosion has already occurred.

AGA is not aware of any pipeline incident due to corrosion after the pipeline was inspected by DA. This indicates that DA is a viable and effective way to find pipeline defects caused by corrosion. AGA recognizes that DA is not effective to identify other threats.

Risks Associated with District Regulators

Recommendations have been made which require operators to eliminate common modes of failures at their district regulator stations. AGA members recognize that there is a need for operators to re-evaluate the risks associated with district regulator stations following the tragic events that occurred in Merrimack Valley. However, the recommendations apply a one-size-fits-all methodology and overlooks uniqueness of each operator's system. Last fall, AGA published its *"Leading Practices to Prevent Over-Pressurization,"* which provides 63 practices for operators to consider for implementation. These practices provide options to provide overpressure protection at all points in the natural gas delivery supply chain for all operating pressures.

Any federal regulation which develops additional rigor around requirements for district regulator stations should follow the existing rulemaking process. Additionally, it is important to consider the impact of requiring aggressive timelines for making updates to existing stations. Mandating that these updates be made within a limited timeframe may divert resources from completing higher-priority safety work, and inadvertently affect pipeline safety. Any new regulations should consider how the threats associated with regulation stations compare holistically with an operator's system threats.

Effective Emergency Response and Communication Plans are Vital

Every gas event is unique and establishing communication with first responders as soon as practicable after discovery of an incident benefits public safety. However, mandating communication within 30 minutes may not allow operators time to perform an initial assessment, confirm that the event is related to natural gas, or that the event is on an operator's pipeline.

AGA supports prompt emergency response and enhancing communication with first responders, affected public, and relevant public officials as soon as practicable after discovery of an incident. It is reasonable to require operators to implement their communication plan as soon as practicable after an operator has confirmed discovery of a gas pipeline emergency.

Operators Should Share Meaningful Information that Educates the Public About Pipeline Safety

Recommendations have been made for natural gas operators to share procedures, integrity management programs and integrity management results with emergency responders, public officials, and the general public. Currently, federal and state pipeline safety regulators have access to this information and pipeline operators are required by law to develop and implement public awareness programs to help educate the public, appropriate government organizations, and others on damage prevention, possible hazards associated with an unintended release, physical indications that a release could have occurred, and other information.

AGA and its members are concerned that sharing sensitive information publicly could compromise the safety of the natural gas system. An operator's Operations & Maintenance Plan, Integrity Management Plan, and Integrity Management results contain sensitive information that could lead to pipeline safety issues if given to those that want to cause harm to a pipeline system. In addition, this information is extensive, may become difficult to manage and navigate even for another natural gas operator, and each utility has specific terminology and processes unique to their system.

AGA has had many discussions with emergency responders who have made it clear they want condensed, relevant information that is simple to understand. The information being proposed to provide to emergency responders does not meet their needs and would not be helpful during an emergency, outage, or incident. Operators already conduct outreach to both public and relevant stakeholders within their emergency response plans.

Congress should leverage the expertise of PHMSA and the diversity of the agency's advisory committees to evaluate and determine whether additional information should be made available to first responders and to the public, instead of issuing a self-executing mandate. Since the advisory committees include emergency managers, public safety advocates, state and federal regulators, and pipeline operators, the committees are well-suited to ensure that first responders have the pipeline safety information that they need. Similarly, AGA believes that that advisory committees would successfully identify an appropriate balance between pipeline companies' business needs and practical limitations and citizens' rights to understand the pipelines in their communities.

Pipeline Safety Management Systems (PSMS) Enhance Pipeline Safety

American Petroleum Institute Recommended Practice (RP) 1173 (July 2015), PSMS, outlines a systematic approach to managing pipeline safety and improving overall pipeline safety performance. The core principal of PSMS, which is the "Plan-Do-Check-Act" cycle, requires operators to determine the steps to be taken to evaluate and enact changes/improvements within 10 specific areas. Ultimately, this requirement drives the industry towards its zero-incident goal by providing that the various components of PSMS are regularly reviewed and continually evolving.

The industry and other stakeholders, including PHMSA, believe that PSMS will enhance pipeline safety and improve safety culture if properly implemented. Significant efforts have been underway since the release of PSMS to promote, pilot and share learning on the benefits of implementing PSMS. Any prescriptive regulatory requirements to implement PSMS will limit the effectiveness of the continuous improvement cycle and could shift the focus from safety culture to compliance culture. In addition, new

regulatory requirements will stall current PSMS implementation efforts to provide compliance with regulations, delaying any potential benefits from implementation.

AGA supports the promotion of PSMS and the development of system(s) that promote self-disclosure and a collaborative culture between regulators and operators, like the program in place with FAA. As noted earlier, the AGA Board of Directors has recommended that all of its members begin implementation of PSMS in their organizations. This will also address the issue of Management of Change.

Management of Change Principles are Important for Significant Work

Some have argued to include provisions that require natural gas distribution systems have a detailed procedure for Management of Change. Management of Change is a best practice to ensure that safety, health and environmental risks and hazards are properly controlled when an organization makes changes to their facilities, operations or personnel.

The industry is supportive of Management of Change for significant work, such as capital main installation or replacements, changes to an engineering design, or changes to a standard. In fact, in May 2019, the AGA Board passed a resolution recommending all AGA member companies adopt API RP1173 (which includes Management of Change provisions) within the next 3 years. This will help reduce the risk of inadvertently introducing a new hazard or unknowingly increase the risk of an existing hazard.

Each operator's gas system is unique and subject to different system threats and risks. Operators should identify significant work relevant to their unique system and apply Management of Change principles to important work such as changes to technology and equipment, and procedural and organizational changes within their company systems.

These processes covered by a PSMS program should clarify roles and responsibilities and should ensure that personnel have knowledge and skills specific to natural gas pipelines. Management of Change principles should identify industry-specific knowledge, competencies, and skills employees and contractors require to perform work processes.

Establishing Safety Incentives Helps Promote Safety Culture

AGA strongly supports recommendations to develop incentives for operators who foster a safety culture that exceeds minimum requirements or embraces best practices. Our members strive to identify measures that are innovative and further safety practices across their system and to share these initiatives with their counterparts by participating in industry forums, conferences, and discussions. Providing non-financial incentives for intrastate and interstate natural gas pipeline operators encourages pipeline operators to continuously improve and enhance the safety of their pipeline system.

Voluntary Information Sharing (VIS) Program

AGA is supportive of creating a VIS program that allows pipeline operators, vendors, and regulators to share information critical to pipeline safety and lessons learned. Over the past several years, the industry, including operators, vendors, regulators and the public, have participated in a VIS working group to develop a framework for implementing VIS for transmission and distribution pipelines. One critical component to an effective VIS program will be a safe harbor provision that encourages self-reporting. The Secretary should ensure that if a VIS program is started, it follows the comprehensive list of

recommendations provided by the VIS working group report as the working group has made clear that a VIS program can only be fully successful if all recommendations are followed.

To ensure participation within the VIS, legislation will need to be in place that allows operators to provide information confidentiality without exposure to punitive measures. AGA recommends that the VIS include safety initiatives as described above within this program and include all stakeholders (all segments of the natural gas and hazardous liquid value chain, including manufacturers, service providers, regulators, and the public). The Secretary should establish a VIS executive board that is represented by operators, regulators, and public safety advocates to address trust barriers described in the VIS report. Finally, the VIS should not rely solely on congressional funding to sustain the program long term. The VIS executive board should develop long term strategy for funding that includes public – private partnerships to ensure the long-term stability of the program.

Professional Engineer Licensing Requirements Do Not Enhance Pipeline Safety

A Professional Engineer (PE) license does not demonstrate that an individual has the specified system knowledge or experience required to understand natural gas systems and make decisions related to public safety. This is especially true since there is not a PE license specifically for natural gas pipelines. For tasks that require an engineer, it is more important for an individual to have both an engineering degree and knowledge of the natural gas system. Having processes in place to ensure applicable technical expertise, design review and approval, with Management of Change incorporated into the process, will have the greatest impact on pipeline safety.

A Mandamus Clause Should Not be Included in 49 U.S.C. Section 60121

The House Energy and Commerce Committee's draft legislation includes a mandamus clause that would allow local and state governments, and others via "citizen lawsuits", to ask the courts to compel PHMSA to carry out its statutory pipeline safety responsibilities. Advocates argue that this is particularly important given PHMSA's perceived inability carry out its mandated responsibilities. AGA believe that expanding citizen suit provisions of § 60121 to allow mandamus-type actions against PHMSA would result in more litigation, which would require PHMSA to redirect its resources to defending itself in court instead of executing its statutory responsibilities to ensure pipeline safety. Pipeline safety is a highly technical and complex area of the law. The regulatory agency with specific subject matter expertise, not the courts, is best positioned to make decisions regarding how to establish regulatory priorities, promote new technologies, balance costs and benefits, and ensure public safety.

Proposed Changes to Criminal Penalties Provisions

The House Energy and Commerce Committee's draft legislation proposes to amend the Pipeline Safety Act's criminal penalties provision (49 U.S.C. § 60123) by replacing the current "knowingly and willfully" language with "knowingly or recklessly". The current version of 49 U.S.C. § 60123 allows for criminal prosecution of those accused of knowingly and willfully violating the law. This holds those who engage in egregious, intentional misconduct accountable and ensures compliance with the law. There is no history of conduct in the industry that merits expanding the current criminal liability standard and there is insufficient evidence to suggest criminally culpable conduct is not adequately addressed within the existing legal framework.

Safety is the top priority for America's natural gas utilities. A bedrock of enhancing safety throughout the

industry is the promotion of a culture that encourages self-disclosure and self-reporting. The proposed revision to the standard of criminal liability may chill such self-reporting and be counterproductive to further developing a strong safety culture and creates a risk of unintentionally criminalizing actions and decisions pipeline operators make when assessing and managing pipeline risk priorities. As such, AGA does not support expanding criminal liability to include "recklessness" under § 60123.

PHMSA has proposed strengthening the existing criminal penalty measures for damaging or destroying a pipeline facility. We hope that pipeline safety legislation will find a way to differentiate between the constitutionally guaranteed right to peacefully protest and actions that jeopardize people, property and our environment. The safety of our employees, customers and communities is the top priority for America's natural gas utilities and it is important to ensure only trained professionals come in contact with natural gas equipment. Anything else threatens the safety of everyone on that site, our environment and the communities around those facilities. Additionally, this interference impacts service to customers who rely on natural gas to heat their homes, warm their water, cook their food, run their businesses, power their factories, fuel their power plants, and provide essential energy to schools and hospitals.

Civil Penalties Should Not be Increased

Both the Markey–Trahan bill and the House Energy and Commerce Committee's draft legislation propose significant increases to civil penalties available under the Pipeline Safety Act. AGA believes that existing penalties are sufficient to deter operators from violating the law and the proposed increases will not advance the goals of deterrence and swift resolution of safety issues. The proposed hundredfold increase in the Markey–Trahan proposal and the elimination of any cumulative cap on civil penalties in the House Energy and Commerce Committee's proposal are excessive and will, if implemented, be counterproductive to enhancing pipeline safety and reliability. In fact, imposing excessive penalties may actually divert resources away from improving pipeline safety as fines are not necessarily reinvested in pipeline safety programs. Federal civil penalties are just one available enforcement tool available to regulators. For example, regulators can impose compliance orders in response to a violation that require an operator to implement specific actions to remedy a violation. Implementing a compliance order can cost far more than the amount of a civil penalty while resulting in meaningful safety improvements. PHMSA can also issue corrective action orders and safety orders to address conditions posing an integrity risk, regardless of whether a violation has occurred. These other enforcement mechanisms provide real, tangible results. Current civil penalty amounts, which were increased in the last round of pipeline safety reauthorization, are effective an effective deterrent and should remain unchanged.

Increases in User Fees Negatively Impact Customers

The House Energy and Commerce Committee's draft legislation proposes to significantly increase the authorized appropriations for the Secretary of Transportation. AGA supports PHMSA's collection of pipeline User Fees to fund its natural gas safety activities and initiatives and also supports reasonable and rational increases to these fees.

Proposing significant increases adversely affects natural gas customers since these costs are ultimately borne by natural gas customers. Additional scrutiny should be given to the fully understand if the additional funding is required and to protect customers from unsubstantiated increases.

Research and Development Helps Foster Innovation

AGA supports R&D pilot programs that promote safety, efficiency, and secure transportation of gas.

PHMSA gaining the flexibility to conduct pilots for R&D can assist in laying a foundation for innovative solutions to long term issues. The funding for safety pilot programs should expand to intrastate transmission and distribution pipelines. Limiting R&D and pilot programs to only interstate transmission pipelines will prevent research and innovation opportunities and will inadvertently narrow the focus of safety, efficiency, and secure transportation to only a portion of the country's pipeline infrastructure.

Currently, the nation's infrastructure of distribution pipeline systems has 7 times more mileage than the country's transmission systems. Failing to include distribution systems into pilot programs will significantly overlook an opportunity for all the nation's natural gas and liquid pipeline infrastructure. AGA recommends that PHMSA is given authority for pilot programs that include interstate and intrastate transmission and distribution systems. AGA is committed to improving the transparent collaborative relationship with PHMSA that has historically enhanced pipeline safety R&D.

Remote-Controlled and Automatic Shutoff Valves Provide Benefits

Additional scrutiny has been placed on installing automatic shutoff valves and remote-controlled valves (ASVs and RCVs). Operators have installed ASVs on pipeline segments that have not experienced wide pressure fluctuations and are not expected to experience wide pressure fluctuations in the future, and where the risk analysis indicates the ASV will provide added protection. PHMSA is working to publish its notice for proposed rulemaking (NPRM) which addresses ASVs and RCVs for new and fully replaced transmission pipelines. The primary benefit of an ASV or RCV is the ability to control the amount of natural gas released after the incident has already occurred. AGA supports PHMSA in developing a proposed rule to modify 49 C.F.R. § 192 for ASVs and RCVs on new and fully replaced transmission pipelines.

Conclusion

America's gas utilities' commitment to pipeline safety relies on sound engineering principles and technological advance, a trained professional workforce, effective community partnership and a strong partnership with state pipeline safety authorities and PHMSA. As pipeline safety reauthorization legislation is drafted this year, AGA encourages Congress to (1) embrace PHMSA's role as regulator with commensurate funding, (2) support the pipeline safety rulemaking process by passing legislation that does not contradict guidance already provided by the Gas Pipeline Advisory Committee for issues such as MAOP verification and DA and continues collaborative stakeholder engagement in the regulatory process, (3) recognize the great strides in pipeline safety engineering and operating practices that natural gas utilities are putting into practice across the country, and (4) exercise discretion as Congress considers changes to law or regulation that may prove tangential or counterproductive to the government and gas industry's mutual interest in the constant improvement of pipeline safety practices and technology and our mutual interest in overall public safety.

Mr. RUSH. The Chair now recognizes Mr. Lesniak for 5 minutes.

STATEMENT OF CHUCK LESNIAK III

Mr. LESNIAK. Thank you.

Good morning, Chairman Rush, Ranking Member Upton, and members of the committee. Thank you for inviting me to speak about pipeline safety today.

Before we get into various pipeline safety issues, let me give you a brief overview of where we stand today regarding the safety of pipelines in this country.

According to PHMSA data, over the past 5 years there's been on average nearly two reportable pipeline incidents every day that cause the death or hospitalization of over seven people every month.

These incidents have caused nearly $2.4 billion in property damage and released over 18 million gallons of hazardous liquids into the environment.

While progress has been made over the last 20 years and pipelines are a critical part of our Nation's energy infrastructure, pipelines are near our homes, schools, shopping centers, lakes, rivers, and coastlines and we simply must do better to protect our communities and the environment.

We thank the committee for releasing a strong bill for discussion as part of this year's reauthorization process and we also thank and recognize the Members from Massachusetts for their efforts to introduce good legislation to address the tragedy that occurred in the Merrimack Valley last year.

We support the vast majority of the provisions in these bills. We certainly support the parts of these bills that make it easier to pass needed regulations and to meaningfully enforce those regulations.

This would include Section 4 of this committee's bill to correct the unnecessary duplication of cost-benefit requirements in the statute; Sections 8 and 9, making both the civil and criminal penalties more meaningful; and Section 7 that helps to align these statutes with many others, allowing citizens to petition the courts when PHMSA fails in its duty to carry out congressional mandates.

It has long been understood that part of the pipeline safety problem in this country is that PHMSA and its State regulatory partners are often underfunded for the task at hand.

We thank Congress for their previous support to expand the number of PHMSA inspectors and we strongly support the level of appropriations in this committee's draft bill to support the needed increases to the reimbursement rates for State programs, allow PHMSA to better conduct data and risk analysis, their special program implementation, and for enforcement and regulatory efforts.

As the trust has pointed out for over a decade, according to PHMSA there are over 435,000 miles of unregulated natural gas gathering lines in this country, many of which are functionally the same as gas transmission pipelines and present similar hazards to the public and the environment.

We strongly support the change in definitions in Section 3 that would bring the higher pressure gathering lines under some sort of Federal minimum standards.

We also believe that it's very important that the location of these lines be known to regulators, emergency responders, and surrounding communities. So we also hope you will amend Section 60132 of the statute to remove the harmful clause that exempts these pipelines from being included in the national pipeline mapping system.

We really appreciate the provision of this committee's bill in the Leonel Rondon Pipeline Safety Act that proposes to make clear in the statute what PHMSA has failed to make clear in the regulations.

For well over 20 years, the NTSB, Congress, and others have tried to get PHMSA to implement meaningful rules regarding leak detection and automated valves.

We support Section 5's effort to make this clear by adding it directly to the statute. We also suggest that it be made clear that PHMSA must adopt a clear standard for effectiveness for any new rules regarding leak detection.

We support Section 2, 3, 4, and 6 of the Leonel Rondon Pipeline Safety Act which clarifies important lessons unfortunately learned through the Merrimack Valley tragedy.

We continue to hear complaints from local emergency responders about the difficulty in obtaining meaningful information about the pipelines that run through their communities.

We support Section 6 of this bill that will go a long way to alleviating this problem and ask that you ensure it includes the information that NTSB has recommended be provided to emergency responders.

The administration has also recently released the Protecting Our Infrastructure of Pipelines Enhancing Safety Act of 2019.

While it's a substantially weaker bill than what this committee has drafted, there are many good provisions in it that we support, some of which are correctly aimed at fixing issues learned in the Merrimack Valley tragedy.

There are also some troubling sections in the administration's bill that we hope you will not adopt. Please see our written testimony for specifics.

I see my time is almost up and so thank you again for inviting me to testify today. I am glad to answer any questions.

[The prepared statement of Mr. Lesniak follows:]

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FOR THE

SUBCOMMITTEE ON ENERGY
OF THE
COMMITTEE ON ENERGY and COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON

Legislative Solutions to Make Our Nation's Pipelines Safer

June 19, 2019

Good morning Chairman Rush, Ranking Member Upton, and members of the Subcommittee. Thank you for inviting me to speak today on the important subject of pipeline safety. My name is Chuck Lesniak and I am speaking today on behalf of the Pipeline Safety Trust. Up until my recent retirement I was the Environmental Officer for the City of Austin, Texas where I worked for over twenty-five years. I am also a member of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Technical Hazardous Liquid Pipeline Safety Standard Committee, and was a member of PHMSA's Pipeline and Informed Planning Alliance. In all of these positions I have worked with the Pipeline Safety Trust on various pipeline safety initiatives and issues, so I am honored to provide their testimony today.

The Pipeline Safety Trust came into being after a pipeline disaster twenty years ago - the 1999 Olympic Pipeline tragedy in Bellingham, Washington that left three young people dead, wiped out every living thing in a beautiful salmon stream, and caused millions of dollars of economic disruption. While prosecuting that incident the U.S. Justice Department was so shocked at the way the pipeline company had operated and maintained their pipeline, and equally shocked at the lack of oversight from federal regulators, that they asked the federal courts to set aside money from the settlement of that case to create the Pipeline Safety Trust as an independent national watchdog organization over both the industry and the regulators.

Today our testimony will focus on three recently proposed bills in this order:

- The Safer Pipelines Act of 2019,
- The Leonel Rondon Pipeline Safety Act, and
- The Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2019

The three bills we're here to discuss today take aim at several of the shortcomings in current pipeline regulation.

Safer Pipelines Act of 2019 (discussion draft)

Section 2. Authorization of Appropriations

The Pipeline Safety Trust supports the larger appropriations throughout this bill. PHMSA is chronically underfunded given the vast network of pipelines in our country and the risk they represent to public safety and the environment. While in past reauthorizations PHMSA has been given more money for inspectors, this additional money will hopefully provide an opportunity to also help cover the needed costs of support staff to better analyze data, review risks, and support PHMSA's regulatory and enforcement functions. These increased appropriations will also hopefully close the gap between the amount PHMSA is allowed to fund state pipeline safety program and the amount they actually fund state programs. We also strongly support increasing the total amount of support to the Pipeline Safety Information Grants to Communities to

$2 million per year and removing the prohibition on these funds coming from user fees. These local grants help communities develop tools that make them more aware of pipelines and better understand how to protect their communities and the pipelines in them.

Section 3. Definitions

The proposed changes will bring under regulation many of the hundreds of thousands of miles of currently entirely unregulated gathering lines running near homes and businesses in more rural areas. PHMSA estimates there to be over 435,000 miles of these pipelines and as production and gathering continue to increase, it's important that these rural pipelines fall under minimum regulations to keep communities safe, and so regulators know when and why they fail, and that they participate in One-call systems. These higher stress, higher pressure lines should properly be subject to safety regulations like transmission lines, because they present similar risks and they are often indistinguishable from a transmission line, except for the designation given by an operator.

One other important change that we would suggest is that regulators and communities need to know where these pipelines are located. Currently the statute in Section 60132 exempts gathering lines from the National Pipeline Mapping System, so there is no way to know where these lines, many of which are functionally the same as transmission lines, are actually located. Because these lines present similar public safety risks as transmission pipelines, this exemption should be corrected. That can be easily done by amending Section 60132 (a) by changing “gathering lines” to “non-regulated gathering lines.”

Section 4. Purpose and General Authority

Cost-Benefit Requirements Under 49 USC § 60102

The years since 2010 found us too often examining the failures that led to major pipeline incidents: Marshall, Michigan; San Bruno, California; Allentown, Pennsylvania; Sissonville, West Virginia; Harlem, New York; Mayflower, Arkansas; two spills into the Yellowstone River, oil flowing into the ocean off Santa Barbara, and too many more. Against that backdrop of incidents, Congressional directives, NTSB and GAO recommendations, these years also provided a perfect example of a broken regulatory process that left PHMSA incapable of producing a single major new safety rule. There are many reasons the process is not working but chief among them is the unique and onerous cost-benefit requirements that PHMSA finds itself saddled with.

In 1996, a concerted Congressional effort was made to insert cost-benefit analysis requirements into rulemaking requirements under a whole host of environmental protection and health statutes, presumably

as a way to reduce regulatory burden and codify the requirements for regulatory cost benefit analyses put in place by Presidents Reagan and Clinton in Executive Orders. Those Congressional efforts ultimately fell short of wide spread success because so many members of Congress realized how such measures in the statute would provide a well funded industry a strong litigation hook that would make it too easy to successfully challenge new regulations and nearly impossible to adequately protect people's health and safety. The 1996 reauthorization of the pipeline safety program, based solely on timing, represents the only health and safety or environmental protection statute where such an explicit directive to an administrative agency to base regulation of risk on a cost-benefit test was actually inserted into statute.

PHMSA rulemaking is therefore subject to two sets of cost-benefit requirements - one under the Pipeline Safety Act and one under the Executive Order that requires an economic analysis of every major rule reviewed by OMB before being published as a proposed rule and subject to comment. We **strongly support** this bill's efforts to put PHMSA's rulemaking on an even playing field with all other agencies and industries by amending 49 USC § 60102 to eliminate references to the risk assessment/cost-benefit analysis. PHMSA would remain subject to the requirements of the Executive Orders requiring a cost benefit analysis of major rules proposed by any agency, and the requirements for transparency in rulemaking provided by the existing statute and procedures.

We also support the second provision in this section which will require that safety-related condition reports made by operators be provided to state officials, local first responders and on scene coordinators at the same time they are made available to PHMSA.

Section 5 Risk Analysis and Integrity Management Programs

a) **Phaseout of Direct Assessments** - The Trust supports the intent of this provision to require PHMSA to plan for a phaseout of reliance by operators on direct assessment as a means of determining the continued fitness for service of its transmission pipeline facilities. This provision mirrors, and will hopefully accomplish a similar NTSB recommendation. Until it is phased out entirely, Direct Assessment should be used only for external corrosion threats where a segment has complete records, and other integrity assessments should be required for any other threat to the segment. Where records are missing, operators should not rely on direct assessment alone, and should be required to use a pressure test to determine the remaining strength of the segment. It is our understanding that there are still hundreds of miles of gas transmission pipeline, primarily intrastate pipelines, that the self implementing language in this section may force to be replaced or refitted to allow internal inline inspections. We think such replacement is needed, but do not know if it can be accomplished in a safe and efficient manner in a two year timeframe as required in this section. It is

our suggestion that this self-implementing two year phaseout also provides an opportunity for individual operators to make a case through PHMSA's Special Permit system to make a case for why they can not accomplish this within that period, or why direct assessment is important on their particular pipeline.

(b) **Automatic Spill Detection and Shut-Off Valves**: It's been nineteen years since Congress was debating a requirement for remote or automatic shutoff valves on natural gas pipelines in the wake of the Edison, NJ accident and the two and a half hours it took to shut off the flow of gas that fed the fireball due to the lack of a remotely controlled shut off valve. It's been nearly 9 years since the 2010 San Bruno tragedy where it took the pipeline operator over an hour and a half to drive to and close a manual valve and the NTSB recommended that PHMSA "***Amend Title 49 Code of Federal Regulations 192.935(c) to directly require that automatic shutoff valves or remote control valves in high consequence areas and in class 3 and 4 locations be installed and spaced at intervals that consider the factors listed in that regulation."***

In the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 Congress asked the Secretary to consider within two years appropriate regulations to require the use of automatic or remote-controlled shut-off valves, or equivalent technology, on new or replaced pipelines. PHMSA did contract with Oak Ridge National Laboratory for a study of such valves. That study[1] concluded that ***"installing ASVs and RCVs in pipelines can be an effective strategy for mitigating potential consequences of unintended releases because decreasing the total volume of the release reduces overall impacts on the public and to the environment."***

In 2010 PHMSA issued an Advanced Notice of Proposed Rulemaking (ANPRM) for hazardous liquid pipelines, and then in 2011 PHMSA issued an ANPRM for gas transmission pipelines. Both ANPRMs made it clear that some change to the requirements for automatic or remote-controlled valves was being considered. Many stakeholder groups invested a significant amount of time responding to these ANPRMs. Unfortunately, years later, information regarding how PHMSA will deal with this issue in a future rulemaking has not been made available. The slowness of the rulemaking process regarding automatic and remote-controlled shut-off valves seems at odds with the public proclamations of concern and action and NTSB's recommendation.

For liquid pipelines the foot dragging is even worse. In 1992, 1996, 2002, and 2006, Congress required OPS to "survey and assess the effectiveness of emergency flow restricting devices (**including remote controlled**

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[1] http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_2C1A725B08C5F72F305689E943053A96232AB200/filename/Final%20Valve_Study.pdf

valves…} to minimize product releases"[2] with the first such requirement having a deadline in 1994 (24 years ago!). Following this analysis, Congress required the then Office of Pipeline Safety to "prescribe regulations on the circumstances under which an operator of a hazardous liquid pipeline facility must use an emergency flow restricting device."[3]

OPS/PHMSA never issued a formal analysis on emergency flow restricting device (EFRD) effectiveness. Instead, in its hazardous liquid pipeline integrity management rule[4], OPS rejected the comments of the NTSB, the US Environmental Protection Agency, the Lower Colorado River Authority, the City of Austin, and the Environmental Defense Fund and chose to leave EFRD decisions up to pipeline operators after listing in the rule various criteria for operators to consider. Such an approach to EFRD use does not appear to meet Congressional intent, partly because the approach is essentially unenforceable and not protective of important environmental assets such as rivers and lakes including those not considered High Consequence Areas.

Congress needs to reiterate its previous mandates to PHMSA on EFRD use on liquid pipelines and ensure they are followed to mitigate the extent of future pipeline releases.

The Trust has been in favor of requiring leak and rupture detection and automatic or remote controlled shut-off valves in high consequence areas for many years. The 2010 failures in San Bruno, CA (natural gas) and Marshall MI (diluted bitumen) highlighted the need for these technologies to be part of every transmission system. Communities should not have to be at the mercy of evening commuter traffic or control room staff errors to know that a pipeline can be shut down without someone needing to travel to and turn a manual valve in the event of a failure. We urge you to adopt a requirement for leak detection systems and for automatic shut-off valves in High Consequence Areas for hazardous liquid pipelines. For natural gas transmission pipelines in Class 3 and 4 areas and High Consequence areas, we support requiring automatic or remotely controlled valves and leak/rupture detection technology that meets a statutorily defined standard. For both hazardous liquid and gas transmission pipelines, without requiring detection equipment to meet some standard of effectiveness, many existing computerized pipeline management systems might be considered to "automatically" identify a failure, when in fact, the public more often identifies them than operator's SCADA systems.

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[2] See 49 USC 60102(j)(1).
[3] See 49 USC 60102(j)(2).
[4] See 49 CFR 195.452(i)(4).

Section 6 Community Right to Know and Emergency Preparedness

The Trust strongly supports the effort to improve engagement of operators with local emergency planning committees and other local first responders. We also support the proposed reporting requirement that would provide the public with some of the most frequently requested information about pipelines near them.

We have two recommendations to strengthen this section. First we ask that it be made clear in section 60102 (d)(3)(A) that "characteristics of the operator's pipelines" include all the information that NTSB recommended be made available to local emergency response officials in their recommendation P-11-8:

> *"Require operators of natural gas transmission and distribution pipelines and hazardous liquid pipelines to provide system-specific information about their pipeline systems to the emergency response agencies of the communities and jurisdictions in which those pipelines are located. This information should include pipe diameter, operating pressure, product transported, and potential impact radius."*

Our other suggestion on this section would be to eliminate the discretion proposed to be given to the Secretary to waive certain aspects of the reporting if the Secretary determines that the inclusion of such information would pose a risk to the security of the pipeline facility. Our experience is that given the opportunity to redact information on security grounds, the Department will use it, and this language provides little guidance that would identify how big or what kind of risk would trigger the Secretary's ability to find disclosure "would pose a risk." The possible solutions to this are either to identify and eliminate the types of information you think might pose a sufficient risk from the list of required reports, or, if there are none in the proposed list, simply eliminate the option for the Secretary to waive inclusion of any item.

Section 7 Actions by Private Persons

After the tragedy in San Bruno resulting from the failure of a PG&E pipeline and the NTSB's findings of regulatory failings at the California regulator, the City and County of San Francisco became concerned about whether there might be similar weaknesses that implicated the safety of PG&E lines in their jurisdiction. They knew that PHMSA annually certified its state partners and they challenged the adequacy of PHMSA's certification process with respect to the CPUC. The case never reached the merits, as the court found, and the 9th Circuit affirmed that without a mandamus clause in the Pipeline Safety Act, there could be no private party challenge to PHMSA's failure to do something required by the Act. This proposed provision fixes that problem and will allow private parties to seek court action to insure that PHMSA carries

out **Congressional mandates** in the Pipeline Safety Act. We strongly support its inclusion in this year's reauthorization bill.

Section 8 Civil Penalties

PHMSA's penalty authority, and the agency's implementation of that authority, results in civil penalties that are economically insignificant to operators, are significantly smaller than those imposed by some states, and are disproportionate to the harm inflicted by pipeline failures.

From 2002 through 2018, the total amount of penalties collected by PHMSA in completed civil penalty cases (from violations discovered in inspections or following incidents) is just over $56 million dollars combined.[5] In that same timeframe, the nearly *eleven thousand* reported pipeline incidents killed 249 people, injured 1041 and caused property damage approaching $8 billion dollars. [6] Congress increased PHMSA's civil penalty authority in the 2011 reauthorization up to a cap of $200,000 per violation and $2 million dollars for a related series of violations. In spite of that increase, there has not been a corresponding increase in penalties proposed or collected, suggesting that PHMSA remains reluctant to impose penalties. In fact, some dramatic incidents, like the failure and explosion of a NiSource natural gas pipeline in Sissonville WV (caused by corrosion) that destroyed a home and a section of Interstate highway, have resulted in no civil penalties at all.

Some states, notably California, have dramatically increased their use of civil penalties in the last decade, levying large fines like the one levied against PG&E following the San Bruno tragedy. The state regulator fined the utility $1.6 billion dollars for violations related to the 2010 failure in San Bruno and has since fined the utility additional millions relating to subsequent recordkeeping, reporting and other violations. These large fines are possible because the California and other state statutes do not have a limit on penalties for a related series of violations. Each day in violation is subject to another penalty.

We strongly support the proposed elimination of the cap on civil penalties for a related series of violations. While PHMSA maintains considerable discretion over when and how much to fine a pipeline company, Congress should at least remove the barriers to adequate enforcement so the agency has the ability to send a message to a company when need be. Congress should also make sure the hearing process where final fines are determined is open to the public, that notice is provided, and that associated non-security-sensitive information is also publicly available in a reasonable time. Given the continuing challenges in

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[5] https://primis.phmsa.dot.gov/comm/reports/enforce/CivilPenalty_opid_0.html?nocache=9634#_TP_1_tab_3 (accessed 11/29/2018).
[6] PHMSA, All Reported Incident Trends, (accessed 11/29/2018).

complying with statutory mandates, we also urge that a deadline be imposed for the amendment of agency regulations to comply with this change.

Section 9. Criminal Penalties

Fortunately it is very rare that a pipeline operator violates the regulations in a way that would be considered criminal. The Pipeline Safety Trust, was born from one of those rare incidents where an operator's actions were proven to be so reckless as to kill members of the public and do uncounted environmental harm. In that case the U.S. Justice Department under President Bush did an outstanding job prosecuting that case, fining the company, and actually getting jail time for company employees. There have only been a handful of other incidents caused by such reckless behavior from pipeline companies since that case nearly 20 years ago, but it is important not to create barriers that make it difficult to hold companies accountable when they knowingly or recklessly ignore the laws meant to keep people safe.

The current statute that applies to pipeline safety - **Title 49 USC § 60123. Criminal Penalties –** sets an unusually high bar for holding companies accountable for criminal behavior. We ask that you align the pipeline safety rules under PHMSA with the PHMSA rules for transportation of hazardous materials and change §60123 to adopt language similar to the language from the Hazmat statute in **Title 49 USC § 5124. Criminal Penalties** ("willfully or recklessly"). The proposal in the discussion draft uses " knowingly or recklessly" and will accomplish that goal. We urge your support.

Section 10 - Maximum Allowable Operating Pressure (MAOP)

One of the many discoveries following the PG&E failure in San Bruno was the surprisingly large number of operators who do not have adequate records of the pipes they have in the ground. Without adequate records, these operators can't be certain whether their pipes are safe to operate at their current MAOPs. PHMSA has yet to issue a new rule about calculating MAOPs for these pipelines without records, which ones must be hydrotested, whether any will remain grandfathered from having testing required. This proposed provision will provide some badly needed direction to PHMSA, essentially requiring all natural gas transmission pipelines to be hydrotested, complying with the NTSB recommendation to eliminate the grandfather clause that exempts certain pre-1970 lines from being tested. We strongly support this provision.

Section 11 Direct Hire Authority

PHMSA has long had difficulty hiring inspectors and engineering staff because of the higher wages available in the private sector, among other reasons. In 2015, PHMSA sought permission for direct hire authority and

was denied by OPM. In the 2016 reauthorization, Congress requested that the Office of the Inspector General report on PHMSA's workforce management practices. The OIG report was delivered in November of 2017 and concluded that "it is not clear that this authority alone would resolve PHMSA's staffing challenge." We believe that if direct hire authority can play a part in improving PHMSA's speed of hiring inspectors and engineers, then we should support it.

HR 3139 The Leonel Rondon Pipeline Safety Act

We all watched in horror as the explosions and fires seemed to play a grim game of leapfrog throughout Lawrence, Andover and North Andover last fall. We send our deepest condolences to the family of Leonel Rondon and to the community that mourns his loss. It is a sad fact that most of the improvements in pipeline safety regulations have come following tragedies, as communities react and insist that the cause of their losses be prevented from causing more losses to other families and communities. There is so much in this bill that one would hope responsible operators were already doing: consider the threats to their systems from the presence of cast iron; have proper emergency communications plans, have a plan for over-pressure alarms, ensure their employees are properly qualified. But as with a lot of aspects of pipeline safety, the current distribution regulations give too much discretion to operators and provide too few specific prescriptions. The provisions of this bill take a step in the right direction by filling in some of those prescriptions.

Section 2. Distribution Integrity Management Program

This section mandates that operators consider the risks presented by the presence of cast iron pipes and mains and the risk of over pressuring those parts of their systems in their integrity management programs. As we earlier stated, it's surprising that this is necessary, but we urge the adoption of this section to bolster the plans themselves and to encourage regulators to really examine the operator's plans, not only for their compliance with the regulations, but also for whether the plans make sense and account for risks known to the regulator.

Section 3. Emergency Response plans

The Massachusetts tragedy made clear that improvements in emergency communications are needed, and this section's requirements for specific plans on how and when first responders and the public will be notified will help improve communications.

Section 4. Operations and Maintenance Manuals

We support this common-sense requirement that operations manuals include procedures for responding to

overpressurization alarms and that operators insure that qualified employees review construction documents and that the operator think through the risks that might be presented by any change in the system and prepare itself to prevent those risks from occurring.

Section 5. Pipeline Safety Management Systems

In 2015, based on a recommendation from the NTSB after nearly a million gallons of oil was spilled into the Kalamazoo River in Michigan, the pipeline industry created a recommended practice (API RP1173) to help pipeline companies implement a continuous improvement Safety Management System. This promising voluntary effort ought to help companies reduce the number of incidents and near misses they have, and help create a stronger safety culture within companies so safety really is the first priority, not just a slogan. We have already seen some companies embrace this fully, and for those companies the change is real. So we support this effort, and believe it can have lasting impacts, but only if companies embrace it, which is always the rub with voluntary practices. We were surprised after the recent tragedy in the Merrimack Valley in Massachusetts to hear how many of the gas companies in that state had not yet moved forward on SMS, and only did so after a tragedy and the strong urging of the state regulator. We think it is still too early to have to make SMS a required regulation, but Congress should certainly ask the industry to show proof that companies are adopting this voluntarily, and what the measurable outcomes are. If the rate of adoption and implementation is too slow then PHMSA or Congress may need to step in with regulatory requirements, or enforcement incentives, to ensure that all companies embrace this valuable system, and not just the companies who do truly put safety first.

One recommendation we would make to help measure whether SMS is being implemented, would be that annual reporting requirements to PHMSA include whether a SMS has been implemented, and whether an entity outside of the company has reviewed that SMS, and who that outside entity was.

Section 6. Pipeline Safety Practices

We strongly support this proposal to require the production and maintenance of accurate, complete up-to-date records of distribution systems, including maps and drawings, and the requirement that these records be available to the relevant regulator.

Section 7. Civil Penalties

As we previously testified on the committee discussion draft, we are in favor of raising the maximum allowable fines under the statue. While we would certainly applaud these proposed changes, we would strongly prefer that the cap on fines for a related series of violations be eliminated entirely.

Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2019

The Administration recently released their proposal for reauthorization – the Protecting our Infrastructure

of Pipelines and Enhancing Safety Act of 2019. There are some good provisions in this bill that we hope this committee will consider, and there are other provision we hope you will reject. Here is a brief synopsis of the section we have the most interest in.

We hope you will support the following sections of the Administration's bill:

Section 4 – Pipeline Construction Project Data Collection

Section 7 – State Pipeline Safety Program Grants

Section 12 – Cost Recovery and Fees for Facility Reviews

Section 14 – Overpressure Protection

Section 15 - Management of Change

Section 16 - Operator Qualification

Section 19 – Joint Inspection and Oversight

We hope you will reject the following sections of the administration's bill:

Section 2 – Authorization of Appropriations

These amounts are actual requests for decreases in funding at a time when state inspection partners are not being reimbursed adequately, and when it is clear that PHMSA requires more funding to adequately fulfill congressional mandates

Section 8 – Property Damage Threshold

We support a thorough review of all incident reporting thresholds, but this single change would eliminate thousands of incidents from reporting, make natural gas pipelines look safer without any real increase in safety, and undermine the ability of regulators and the public to see if safety trends are improving or declining.

Section 17 – Timely Incorporation by Reference

The Secretary already has and uses this ability frequently, so there is no need for this addition. Unfortunately, often these industry developed standards are more focused on what is good for the pipeline industry, and not what is best practice for safety or the communities that might be affected by pipeline failures.

Section 18 – Criminal Penalties

We certainly oppose actions by anyone that put local communities at risk, but the proposed language is not well defined and goes too far beyond actual harm to a pipeline.

One section in the Administration bill that we support but have concerns regarding is **Section 5 – Voluntary Information Sharing System.** We support the idea of creating such a voluntary information sharing (VIS) system, but the details in this section for how that will be accomplished are lacking. A multi-stakeholder committee recently finished a report to the Secretary on how this VIS system should be created and operated, so we hope that PHMSA plans to follow that report's outline. We also have concerns that this will be an expensive effort in the millions of dollars, and there was not a request for additional funding for this effort. Without additional funding this effort might undermine the funding of existing PHMSA efforts, and we would oppose that approach.

According to PHMSA's data over the past five years there has been on average nearly 2 reportable pipeline incidents every day, that cause the deaths or hospitalization of over 7 people every month. These incidents have caused nearly $2.4 billion in property damage and released over 18 million gallons of hazardous liquids into the environment. While progress has been made over the last 20 years and pipelines are a critical part of our nation's energy infrastructure, we must do better to protect our communities and the environment. I thank you for the opportunity to provide this testimony today, and I and others at the Pipeline Safety Trust am available to answer any additional questions you might have and to work with you further as the reauthorization of the national pipeline safety program continues.

Mr. RUSH. The Chair now recognizes Mr. Black for 5 minutes for the purposes of an opening statement.

STATEMENT OF ANDREW J. BLACK

Mr. BLACK. Thank you, Mr. Chairman, Ranking Member.

I am Andy Black, president and CEO of the Association of Oil Pipe Lines. AOPL represents owners and operators of pipelines transporting crude oil, refined petroleum products like gasoline, diesel, jet fuel, and home heating oil, and industrial products like propane and ethane.

Pipeline safety reauthorization legislation offers us an opportunity to continue improvements in pipeline safety. We all seek safer pipelines as the subcommittee's discussion draft title calls for.

Reauthorization should be a place where we can collaborate, work on proposals that bring stakeholders together, and protect each other from harm.

Unfortunately, the discussion draft misses some opportunities for a shared path of collaboration and eliminates other opportunities in the law today.

Instead, the liquid pipelines industry asks that we move forward with positive solutions to harness the benefits of innovation and technology to improve pipeline safety, bring stakeholders together to improve PHMSA programs and regulations, and protect the public environment from harm.

Technology and innovation offer opportunities to move pipeline safety forward. High-tech inspection tools can now scan pipelines like an MRI or an ultrasound at the doctor's office. And yet, crucial sessions of PHMSA's inspection and maintenance regulations are nearly 20 years old and have gaps that fail to address problems like cracking in pipelines.

AOPL recommends a pilot program to provide PHMSA the data it needs to modernize and fill gaps in regulations. Improving how PHMSA performs its pipeline safety mission is important to liquid pipeline operators.

The industry joined with PHMSA, State regulators, pipeline safety advocates, environmental advocates, and representatives of organized labor to recommend creation of a voluntary information sharing program.

This collaborative program, modelled after a successful FAA program for the aviation industry and recommended by a past Congress, would empower pipeline safety stakeholders to jointly solve pipeline safety issues.

Unfortunately, authorization for this program is not in the discussion draft. Instead, there are proposals that drive stakeholders apart and make it hard for PHMSA to improve pipeline safety.

The discussion draft eliminates requirements for PHMSA to benefit from its technical advisory committees and takes away seats at the table for safety advocacy groups, environmental groups and pipeline operators during the rulemaking process.

The discussion would deprive the public of expert discussion of the costs and benefits of proposals. The discussion draft would even eliminate requirements that PHMSA consider whether its regulations would be reasonable.

I can hardly imagine the subcommittee wants PHMSA to consider only proposals that would be unreasonable.

The discussion draft proposal to add a criminal reckless standard would chill a core component of pipeline safety. Operators assess and rank the risks of their pipeline systems and then perform preventative maintenance based on a prioritization of risk.

Comprehensive risk management is at the heart of safety management systems that have been encouraged by the NTSB and PHMSA.

Changing the standard to reckless would lead to second guessing, technical risk assessment decisions, with the benefit of 20/20 hindsight to make a case that an operator should have known that a risk would have caused an incident.

Pipeline operators also may be discouraged from openly sharing information about incidents, a key component of our programs to improve safety industry wide. Applying an ambiguous legal standard of recklessness by criminalizing pipeline risk assessment will not advance pipeline safety.

The discussion draft provision to require automatic shut off valves on liquid pipelines would actually hurt pipeline safety by creating the risk of quickly forcing closed pipeline valves in an uncontrolled way, as the ranking member said, leading to a pressure surge and possible pipeline rupture.

GAO studied this at the request of Congress and confirmed several cases in the past where similar conditions led to ruptures and releases of gasoline and crude oil.

Finally, the pipeline industry believes it is important to protect the surrounding public and the environment from attacks on pipelines. There are loopholes to close in Federal law that prevent enforcement against dangerous valve-turning activity condemned by pipeline safety advocates as well as the industry.

We commend PHMSA for putting forward a proposal to protect the public and the environment from attacks.

Yesterday organized labor, through the International Union of Organized Engineers, the Laborers' International Union of North America, North America's Building Trade Unions, and the United Association of Plumbers and Pipefitters added their support for this effort, writing, "For the safety of American families, the environment, and the skilled trade workers dedicated to safely building and maintaining our infrastructure, Congress should prioritize closing those loopholes in Federal law."

We hope to work with subcommittee on tailored legislation to address this safety priority. I hope we can come together around these proposals for greater stakeholder collaboration, greater use of new technologies and innovation, and greater ways to improve PHMSA programs and protect the public from harm.

Thank you.

[The prepared statement of Mr. Black follows:]

Testimony of Andrew J. Black,
President & CEO, Association of Oil Pipe Lines (AOPL)
to the U.S. House Committee on Energy & Commerce Subcommittee on Energy
Hearing on "Legislative Solutions to Make Our Nation's Pipelines Safer"
June 19, 2019

Thank you, Mr. Chairman, Ranking Member Upton. My name is Andy Black and I am President and CEO of the Association of Oil Pipe Lines. AOPL represents liquids pipeline owners and operators transporting crude oil, petroleum products like gasoline, diesel, jet fuel, and home heating oil, and industrial products like propane and ethane. We have over 50 member companies which deliver over 21 billion barrels annually over a 215,000-mile network of pipelines.

Pipeline safety reauthorization legislation offers us an opportunity to continue improvements in pipeline safety. We all seek safer pipelines, as the Subcommittee's Discussion Draft title calls for. Pipeline safety reauthorization legislation should be a place where we can collaborate, where we can work on proposals that bring stakeholders together, where can we protect each other from harm. Unfortunately, the Discussion Draft before us today misses some opportunities for a shared path of collaboration and eliminates other opportunities for collaboration in the law today.

Instead, the liquid pipeline industry asks that we move forward with positive solutions to: 1) harness the benefits of innovation and technology to improve pipeline safety, 2) bring stakeholders together to improve PHMSA programs and regulations, and 3) protect the public from harm.

Harness the Benefits of Technology & Innovation

Pipelines are getting safer. Over the last 5 years, pipeline operators have reduced the number of liquids pipeline incidents impacting people or the environment by 20 percent. This is government data publicly available from PHMSA. PHMSA data also shows pipeline incidents caused by incorrect operation impacting people or the environment are down 38 percent over the last 5 years, and pipeline incidents caused by corrosion, cracking or weld failures impacting

people or the environment are down 35 percent over that period. A barrel of crude oil or refined products delivered by pipeline reaches its destination safely greater than 99.999% of the time.

A 99.999% success rate means we have tackled the easy problems. All the low hanging pipeline safety fruit has been picked. Traditional regulatory approaches have taken us this far. The current regulatory program of proactive inspections and preventive maintenance is a good approach that finds and fixes most all potential issues before an incident occurs. We are seeing however that remaining pipeline safety issues happen only rarely, when multiple low probability events happen to coincide in previously unpredicted ways to produce an incident.

We believe technology and innovation offer opportunities to close the remaining gap in pipeline safety. Technology will allow us to find the smallest of issues much earlier than before. New best practices will provide the analytical tools and modeling to predict issues farther in the future and allow more time for maintenance to keep pipelines operating safely. Pipeline operators want to put these new technologies and practices to work to the benefit of pipeline safety, but PHMSA regulations are holding us back.

Pilot Program for New Pipeline Safety Technologies and Best Practices

PHMSA's 'Integrity Management' regulations (how and when operators inspect and performance maintenance on pipelines, a.k.a. "repair criteria") were first written nearly 20 years ago. Technology for inspecting pipelines or detecting leaks has advanced greatly since then, but this new technology is not incorporated into PHMSA regulations. PHMSA repair criteria are gap-filled, lacking key requirements for addressing cracking in pipelines, accounting for how pipeline problems grow over time, or benefitting from custom engineering assessments of specific pipe sections. PHMSA has been working to update pipeline repair criteria for over 10 years, but has hit road blocks on where to set new technical requirements based on technology and analytic method capabilities. This has delayed PHMSA completing new regulations.

PHMSA is eager to see new technologies and practices prove their worth and demonstrate they can be harnessed to improve pipeline safety. On May 1, PHMSA Administrator Skip Elliott when asked while testifying before this Subcommittee whether he supported a new pilot program to demonstrate technology responded: "Absolutely".

AOPL supports inclusion of a technology pilot program similar to that proposed in the administration's draft pipeline safety bill. A pilot program can provide PHMSA the data it needs

to modernize and fill gaps in its pipeline safety regulations. A pilot program will help PHMSA speed up the time it takes to complete regulations by getting it the data it needs to set technical requirements.

Utilizing pilot programs is not new for Congress and DOT. A similar program passed by Congress in the TEA-21 highway law provides DOT authority to conduct pilot programs at the Federal Motor Carriers Safety Administration. Congress recently used pilot programs in the FAST Act to require FMCSA to conduct a commercial driver pilot. PHMSA could use the pilot for multiple top priorities, including leak detection technology. A technology pilot program at PHMSA received considerable attention during the subcommittee's hearing, and we urge its adoption.

Regular PHMSA & Public Stakeholder Review of Pipeline Safety R&D Advances

Another way PHMSA can harness technology is regular review of the latest pipeline safety research and development advances. PHMSA, private consortiums, universities and pipeline operators all fund and undertake pipeline safety technology R&D, but collaborative discussions of pipeline safety R&D advances are infrequent. PHMSA's main public forum for discussing new technology occurs only once every two years. The current public advisory committees for liquids and natural gas pipelines, which include government, pipeline operator and public stakeholders, meet regularly to discuss pipeline safety policy issues. Congress should require the current, standing pipeline safety public advisory committees to review regularly PHMSA and outside, collaborative pipeline safety R&D activities.

Incorporate Latest Best Practices

Another source of pipeline safety improvement advice is expert-developed best practices. Pipeline operators develop industry-wide best practices in an open and multi-stakeholder collaborative process certified by the American National Standards Institute. These best practices are technical documents developed by engineers. PHMSA has already incorporated several into their regulations. Prime examples include updated best practices to inspect and maintain pipelines and storage tanks. However, PHMSA is often slow to review or incorporate the latest best practices, which deprives pipeline operators from using the latest innovations and methods to improve safety. AOPL appreciates the administration's proposal for timely incorporation by reference. AOPL recommends the Subcommittee adopt a provision like this.

Automatic Shut-Off Valve Mandate

The Discussion Draft Section 5 provision to require automatic shut-off valves on liquids pipelines would actually hurt pipeline safety by quickly forcing closed pipeline valves in an uncontrolled way, leading to a pressure surge and possible pipeline rupture. Natural gas pipelines do not experience this phenomenon because of the compressible nature of the gas, leading some to propose automatic shut-off valves after the San Bruno pipeline incident. Requiring this for liquid pipelines is contrary to safe practices.

To determine whether shut-off valves are appropriate for liquid pipelines, GAO at the direction of Congress studied automatic and remotely controlled shutoff valves after the 2011 pipeline reauthorization law. GAO concluded remotely controlled and automatic shutoff valves can reduce the size of a pipeline release. However, GAO found automatic shutoff valves for liquids pipelines "can cause an incident, when a valve closes and the subsequent pressure buildup causes the pipeline to rupture." GAO confirmed this risk by citing the documented nine pipeline incidents from conditions similar to an automatic valve closure, one resulting in a 4,000-barrel release. Given differences in site-specific conditions, GAO recommended decisions on shutoff valves be made on a case-by-case basis. The Discussion Draft proposal to mandate shut-off valves is contrary to GAO's findings and we believe would threaten pipeline safety. We urge the Subcommittee to not impose a shut-off valve mandate.

Direct Assessments

Discussion Draft Section 5 would also take away an innovative pipeline safety tool. Direct assessments provide operators an analytical method for determining the condition of a pipe in hard to reach areas that cannot accommodate an internal smart pig inspection tool. While this issue most often impacts local distribution systems with smaller diameter lines, transmission pipeline operators also need direct assessment to assess facility piping, such as at pump stations. Properly conducted direct assessments benefit pipeline safety. We urge the Subcommittee to not eliminate direct assessments.

Improve PHMSA and Pipeline Safety Programs

Improving how PHMSA performs its pipeline safety mission is also important to liquids pipeline operators. To that end, the pipeline industry joined with PHMSA, state regulators, pipeline safety advocates, environmental advocates and representatives of organized labor to recommend creation of a Voluntary Information Sharing (VIS) program. This collaborative

program modeled after a successful FAA program for the aviation industry would empower pipeline safety stakeholders to jointly solve pipeline safety issues. Pipeline operators spent two years contributing to the public advisory committee studying this issue, collaborating with public and government representatives to craft a recommended program. We appreciate the administration providing a VIS placeholder in its legislative recommendation. We urge authorization of a VIS program as outlined by the public advisory committee report.

Consideration of Technical Advisory Committee Recommendations

Instead of promoting collaboration with pipeline safety stakeholders, Discussion Draft Section 4 would remove the current requirement for PHMSA to consider recommendations from its pipeline technical advisory committee when considering new regulations. In doing so, the Discussion Draft not only deprives PHMSA of expert technical recommendations, it effectively takes away seats at the table for pipeline safety advocates, environmental advocates, labor representatives, state regulators and pipeline industry experts. By closing off input from safety stakeholders, the Discussion Draft makes it harder for PHMSA to solve pipeline safety problems. We urge the Subcommittee to not eliminate the requirement for PHMSA to hear the recommendations of its technical advisory committee on regulatory proposals.

Cost-Benefit Analysis

Discussion Draft Section 4 also deprives PHMSA of expert discussion of the costs and benefits of its proposals. Cost/benefit analysis improves the quality of regulations. Regulations that cannot justify their costs are often overly broad, imposing burdens on low-risk activities, making them wasteful and diverting resources away from higher needs. The Discussion Draft also would eliminate the requirement that PHMSA consider whether its pipeline regulations are reasonable, as currently required by law. I can hardly imagine the subcommittee wants PHMSA to consider only unreasonable proposals, but it does beg the question.

Some try to say cost/benefit analysis is to blame for PHMSA's slow rulemaking. We find this argument a red herring. All major rules at some point undergo a cost benefit analysis. Whether PHMSA rules undergo cost benefit analysis earlier or later in the process does not impact the overall schedule. The major reason PHMSA rulemakings were recently so delayed was the strategic decision by the previous administration to combine many different complex topics in large mega rulemakings that overwhelmed the development and review process. Eliminating cost/benefit analysis would do nothing to address this mistake. We urge the

Subcommittee to retain the current cost/benefit requirement, a common sense principle of safety regulation.

Reckless Criminal Standard

Discussion Draft Section 9 to add a criminal "reckless" standard would chill a core component of pipeline safety requirements and programs. Current pipeline safety law, regulation and operator inspection and maintenance programs encourage operators to assess and rank the risks of their pipeline systems. Operators then perform preventive maintenance based on a prioritization of risk. Comprehensive risk management is at the heart of safety management systems that are being encouraged by the NTSB and PHMSA Changing the standard to reckless would lead to second guessing technical risk assessment decisions with the use of 20/20 hindsight to make a case that an operator should have known that a risk would cause an incident. By contrast, we agree knowing and willful misconduct should be subject to criminal punishment. Also, pipeline operators may be discouraged from openly sharing information about incidents, a key component of our programs to continuously improve industrywide safety. Applying an ambiguous legal standard of recklessness by criminalizing pipeline risk assessment will not advance pipeline safety. "Knowingly and willfully" are standards found many places in the code. We urge the Subcommittee to not add a "reckless" criminal standard.

Mandamus Citizen Suits

Another good way to hamper PHMSA and slow down its ability to implement safety programs is Discussion Draft Section 7. EPA-style sue-and-settle citizen-suit provisions have a track record of bogging down agencies in time-consuming litigation. If our concern is PHMSA is overwhelmed with Congressional mandates, then overwhelming them with litigation will not improve the situation. The issues individual citizens or local citizen groups chose to sue upon may not represent the highest overall pipeline safety risk. Court-forced action on citizen suits could divert limited PHMSA resources away from the highest priority needs for pipeline safety improvement. Court-forced action would usurp the proper role of Congress setting policy priorities for PHMSA and public safety. Also, court-forced action creates the risk of PHMSA implementing requirements outside of the rulemaking process with public notice and opportunity to comment. We urge the Subcommittee to not include a mandamus citizen suit provision.

Tailor PHMSA Requirements to Operating Status

A way Congress can make PHMSA operations more efficient is to provide PHMSA authority to regulate pipeline inspection and maintenance consistent with a pipeline's operational status. Market conditions can cause an operator to idle a pipeline for an extended period of time. In those cases, with no product going through the line, the most appropriate safety action is for the operator to purge the line and provide baseline safety protections. However, PHMSA does not have an appropriate set of safety regulations to apply to pipelines idled in today's market conditions. The result is a wasteful application of inspection resources on pipelines with no real safety risk. Pipeline operators are developing an industry-wide best practice for the proper inspection and maintenance of idled pipelines. AOPL recommends adding a regulatory status for inactive pipe based on engineering principles that includes safeguards for the idling and resumption of safe operations.

Incident Reporting Threshold

Another area where PHMSA regulations have failed to stay current is the dollar threshold for reporting incidents. PHMSA requires operators to report pipeline incidents if they meet certain conditions, including a clean-up cost of $50,000 or higher. However, PHMSA set this threshold in 1984 and has not updated it for inflation since. Each year, this threshold becomes more out of line with the original Congressional intent for this value. The low threshold risks deployment of resource for minor incidents which only qualify because of clean-up costs, diverting attention and resources from higher priority issues.

Some express a concern that changing this threshold would reduce their ability to use PHMSA's "significant" incident metric to gauge pipeline safety performance. We find this a hollow argument for the very reason that it is based on an arbitrary numerical dollar value with no inherent connection to safety. Indeed, a past NTSB recommendation to PHMSA was to develop more meaningful pipeline safety metrics. In response, PHMSA, industry and pipeline safety advocates jointly developed a new metric tracking incidents impacting the public or environment (IPE). The pipeline industry supports this IPE metric because it addresses the highest priority of the pipeline safety program: protecting the public and the environment. We appreciate the administration proposing a mechanism to update the current incident reporting threshold and urge those gauging pipeline safety performance to examine the IPE metric. Changing the incident reporting threshold as the Administration proposed would not affect pipeline safety statistics using the IPE metric.

Pipeline Segment Reports

AOPL is concerned Discussion Draft Section 6 requiring detailed segment reporting usurps the proper role of federal and state pipeline safety regulators. Current law, as with many regulatory programs and industry sectors, requires public reporting of basic information on infrastructure locations and violations of safety regulations. Federal regulation requires pipeline operators to make available their detailed inspection and maintenance plans to regulators. Federal law also authorizes PHMSA to conduct inspections of facilities and audits of safety programs.

However, the Discussion Draft goes far beyond current federal reporting and inspection programs to require detailed public reporting of massive amounts of information. In one way, this proposal would deputize the public to replace PHMSA as a reviewer of detailed and technical pipeline safety information, even though the expertise and authority is at PHMSA. This proposal would also be extremely wasteful by requiring mountains of information that no one would have the time to read or analyze, except perhaps those who may wish to mischaracterize information in a bid to stop future pipelines. We have PHMSA for a reason, and that is to be the technical experts designated to inspect and audit pipeline operators. Expanding this role beyond PHMSA is inappropriate and wasteful. We urge the Subcommittee to not adopt the segment reporting requirement.

Direct Hire Authority for PHMSA

AOPL does support providing more tools to PHMSA to hire and retain pipeline safety personnel. Pipeline safety and the proper enforcement of federal pipeline safety regulations are enhanced by expert and experienced pipeline safety inspectors. However, pipeline inspectors are coming to PHMSA relatively inexperienced and departing PHMSA after gaining expertise to pursue more lucrative opportunities in the private sector. The ability to compensate pipeline inspectors at market rates would enhance PHMSA's ability to attract and retain expert pipeline inspectors. The Discussion Draft Section 11 language for direct hire authority would help achieve this goal.

Protect the Public from Harm

Criminal Penalties for Attacking Pipeline Infrastructure

Finally, the pipeline industry believes it is important to protect the surrounding public and the environment from attacks on pipelines. There are loopholes to close in current federal

law that prevent enforcement against dangerous valve-turning activity condemned by pipeline safety advocates as well as the pipeline industry.

In October 2016, anti-pipeline activists staged simultaneous attacks on 5 crude oil pipelines in 4 states along the U.S. – Canada border. Assailants targeted valve stations maintained by pipeline operators to stop the flow of product through the pipeline when necessary to conduct maintenance or isolate a pipeline segment during an emergency.

After breaking the chains and locks on perimeter fencing, assailants entered the facility grounds and turned valves shutting off the flow of pipelines that together had a delivery capacity of 2.8 million barrels of crude oil a day, or around 15 percent of daily U.S. consumption. In some cases, the assailants by telephone notified the pipeline operators of their actions, who shut down the pipeline flow from their control centers as a safety precaution.

In 2017, assailants again targeted for attack the same pipeline facility attacked in 2016 in Washington State. In 2019, assailants attacked another pipeline in northern Minnesota. Other assailants admitted using acetylene torches to pierce holes in a major pipeline under construction in Iowa and South Dakota, threatening a release if the pipeline went into service without repairs.

After the 2016 attacks, Carl Weimer of the Pipeline Safety Trust (PST) said on the PST blog:

> *"[w]hile we certainly understand the activists concerns with the lack of speed to address climate change we think that illegally closing valves is a dangerous stunt that really does little to address these people's concerns. The Pipeline Safety Trust was founded in part because a valve closed unexpectedly causing a pressure surge that ruptured a pipeline killing three young men. Closing valves on major pipelines can have unexpected consequences endangering people and the environment. We do not support this type of action, and think it is dangerous."*

Public safety is threatened during attacks on pipelines, even if only closing a pipeline valve, because improper closure of pipeline valves can cause a pressure surge from the mass and momentum of the liquid traveling through the pipeline, potentially resulting in a rupture and release. While no releases resulted from the 2016, 2017 or 2019 pipeline valve attacks, the U.S. Government Accountability Office confirmed the risk of rupture from improper valve operation in a Congressionally mandated 2013 report. Pipeline operators have documented 9 pipeline incidents from conditions similar to an improper valve closure, one resulting in an

1,100 barrel diesel fuel release and another resulting in a nearly 4,000 barrel natural gas liquids release. A crude oil pipeline release of this magnitude could cause serious harm to the assailants, harm members and property of the surrounding public and harm the environment.

Current Federal statute at 49 USC §60123 prohibiting damaging or destroying interstate pipeline infrastructure does not address changing tactics that are nonetheless dangerous to the assailants, public safety and the environment. Under §60123, the guilty conduct making the action illegal must include "damaging" or "destroying" the interstate pipeline facility. These terms are commonly defined respectively as causing physical harm to something in such a way as to impair its value, usefulness, or normal function and damaging something so badly that it cannot be repaired.

Several of the recent attacks against interstate pipelines neither damaged nor destroyed the facilities. The valve turnings, while a dangerous threat to the assailants, public and environment, did not damage or destroy the valves. Several more recent attacks, which did cause physical damage to pipelines, occurred at locations where the pipeline was still under construction and not yet operating as an interstate pipeline. State legislatures are acting to close gaps in their statutes protecting pipelines and infrastructure. States are extending criminal penalties to tampering with, impeding or inhibiting the operation of pipeline infrastructure.

Congress should plug the same loopholes in federal law. AOPL understands and supports the need to protect First Amendment rights and the ability to protest. AOPL supports a narrowly targeted approach that preserves free speech and protest rights will deterring violent activities that endanger the surrounding public or the environment. We appreciate the administration proposing language to close these loopholes and strongly urge the Subcommittee to enact some version of this proposal.

I hope we can come together around these proposals for greater use of new technologies and innovation, ways to improve PHMSA programs and protect the public from harm. Thank you and I look forward to your questions.

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Mr. RUSH. The Chair thanks the gentleman.

The Chair now recognizes Mr. Owesman—Osman?

Mr. OSMAN. Osman.

Mr. RUSH [continuing]. Osman for 5 minutes for the purposes of an opening statement.

STATEMENT OF C.J. OSMAN

Mr. OSMAN. Chairman Rush, Ranking Member Walden, Ranking Member Upton, members of the subcommittee, good morning.

My name is C.J. Osman, and I am the director of operations, safety, and integrity at the Interstate Natural Gas Association of American, INGAA.

Thank you for the opportunity to testify today. INGAA appreciates the important work that the subcommittee is undertaking and we look forward to working with you on the reauthorization bill that enhances pipeline safety in America.

INGAA's members transport natural gas through a network of transmission pipelines that are analogous to the interstate highway system. These are large capacity critical infrastructure systems that span multiple States or regions to bring our Nation's natural gas to market.

That natural gas is used to heat our homes, to cook our food, to power our Nation's industries, and to generate electricity. Our industry is relentlessly committed to its obligation to the communities we serve to operate safely, reliably, and responsibly.

INGAA asks the subcommittee to consider four key points in its deliberations to reauthorize the Pipeline Safety Act. First, INGAA strongly supports updating the act to reflect modern pipeline safety technologies and engineering practices. Many PHMSA regulations are outdated, which can create a barrier to implementing 21st century programs.

Therefore, INGAA supports PHMSA's legislative proposals to implement a new technology pilot program and to require timely incorporation of consensus technical standards by reference.

Additionally, Congress should direct PHMSA to complete its ongoing rulemaking to update the 50-year-old class location change regulations.

Second, Congress should embrace the recommendations of PHMSA's advisory committees when updating the Pipeline Safety Act. The Gas Pipeline Advisory Committee provides technical and policy input on PHMSA's natural gas rulemakings.

The advisory committee is comprised of equal representation from members of the public, Federal and State agencies, and natural gas operators.

INGAA is concerned that the subcommittee's proposed changes to the maximum allowable operating pressure and direct assessment requirements contradict PHMSA's pending gas transmission safety rules and would overrule years of advisory committee discussions.

For example, while spike testing is an important tool, it is an aggressive technique that is not relevant to confirming maximal allowable operating pressure. If enacted, the broad application of spike testing proposed in the subcommittee's discussion draft would risk damaging our Nation's natural gas infrastructure and not make it safer.

Additionally, professional engineer licenses are not necessary for all pipeline engineers. Different tasks require different knowledge, training, and skills. Instead of restrictive licensure requirement, INGAA supports the comprehensive management of change requirement in PHMSA's pending gas transmission rules. This approach will more effectively ensure a competent technical review.

Furthermore, instead of issuing a self-executing mandate directing operators to make more information available to the public and to first responders, Congress should leverage the expertise of PHMSA and the diversity of the agency's advisory committees to evaluate this issue.

Third, INGAA urges the subcommittee to retain important aspects of the PHMSA rulemaking process. Congress should retain the cost-benefit analysis requirement in the Pipeline Safety Act.

This requirement ensures that PHMSA evaluates available alternatives to identify the best option when developing new regulations and it requires a transparent public review of PHMSA's analysis.

No PHMSA regulation has ever been overturned on the basis of the cost-benefit analysis requirement demonstrating that the act currently provides a clear legally defensible standard.

Additionally, adding a mandamus provision to allow citizens to sue PHMSA would not enhance pipeline safety. PHMSA's best position to make decisions regarding how to regulate pipelines and Congress and sufficient oversight tools to require the agency to meet its statutory obligations.

INGAA shares the subcommittee's frustration over PHMSA's delays in completing new rulemakings. But rather than bypassing the rulemaking process through self-executing mandates from mandamus, Congress should strengthen PHMSA's rulemaking capabilities.

Therefore, we strongly support solutions such as the subcommittee's direct hire proposal.

Fourth, several of the proposals would make unnecessary or harmful changes to the enforcement provisions in the Pipeline Safety Act. This would encourage litigation and nondisclosure at the expense of collaboration and safety culture.

There is no need to modify the existing criminal provision for operator violations. Federal prosecutors have successfully brought criminal cases against pipeline operators where appropriate and there is no evidence that the current statutory language has created a bar to criminal prosecution.

Furthermore, PHMSA's civil penalty authority is not lacking. The current limits exceed those and many other health, safety, and environmental protection statutes.

In addition to fines, PHMSA issues corrective action orders which can produce immediate safety benefits.

Thank you again for the opportunity to testify. INGAA stands ready support a timely reauthorization bill that enhances the safety of our Nation's pipeline infrastructure.

[The prepared statement of Mr. Osman follows:]

TESTIMONY OF

C.J. OSMAN
DIRECTOR OF OPERATIONS, SAFETY, AND INTEGRITY
INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA (INGAA)

BEFORE THE
SUBCOMMITTEE ON ENERGY
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

REGARDING
REAUTHORIZATION OF THE PIPELINE SAFETY ACT

JUNE 19, 2019

Chairman Rush, Ranking Member Upton, and Members of the Subcommittee:

Good morning. My name is C.J. Osman, and I am Director of Operations, Safety, and Integrity at the Interstate Natural Gas Association of America (INGAA). Thank you for the opportunity to provide testimony regarding the 2019 reauthorization of the Pipeline Safety Act. INGAA appreciates the Subcommittee's efforts to develop draft pipeline safety legislation, and we look forward to working with the Subcommittee to support a reauthorization bill that enhances pipeline safety in America.

INGAA is a trade association that represents the interstate natural gas pipeline industry. INGAA's members transport the vast majority of the natural gas consumed in the United States through a network of approximately 200,000 miles of interstate transmission pipelines. These transmission pipelines are analogous to the interstate highway system. They are large capacity, critical infrastructure systems spanning multiple states or regions to bring the nation's natural gas to market. That natural gas is used to heat our homes, cook our food, power our nation's industries, and generate electricity.

Our industry is relentlessly committed to transporting natural gas in a safe, reliable, and environmentally responsible manner. Not only does this make good business sense, but far more importantly, it is core to our function as operators of critical infrastructure. We are obligated to the communities we serve and in which we live to operate safely, reliably, and responsibly.

SUMMARY OF TESTIMONY

INGAA asks the Subcommittee to consider four key points in its deliberations regarding reauthorization of the Pipeline Safety Act:

First, INGAA strongly supports updating the Pipeline Safety Act to reflect modern pipeline safety technologies and engineering practices.

INGAA members continue to incorporate modern technologies and advanced engineering practices that enhance our pipeline safety performance. However, many PHMSA regulations are outdated, and this can create a barrier that prevents pipeline operators from implementing 21st-century technologies and practices.

Therefore, INGAA supports PHMSA's legislative proposals to implement a new pipeline safety technology pilot program and for timely incorporation of consensus technical standards by reference. Additionally, Congress should direct PHMSA to complete its ongoing rulemaking to update the class location change regulations.

Second, INGAA is concerned that several of the recent legislative proposals would overrule years of work in developing new pipeline safety regulations for gas transmission pipelines. Some of these proposals would either contradict recent rulemaking recommendations from PHMSA's advisory committees or bypass the advisory committees altogether.

INGAA strongly supports PHMSA's Federal Advisory Committee process, and it is critical that Congress embrace the advisory committees' recommendations when updating the Pipeline Safety Act. The advisory committees are comprised of 15 members who provide technical and policy input on PHMSA rulemakings, with equal representation from the natural gas industry, federal and state agencies, and the public.

The Subcommittee's discussion draft proposes changes to the maximum allowable operating pressure and direct assessment requirements that would contradict PHMSA's pending gas transmission safety rules and multiple years of Gas Pipeline Advisory Committee (GPAC) discussions. For example, while spike testing is an important assessment tool for certain pipes that are susceptible to time-dependent cracking, spike testing is not relevant to confirming maximum allowable operating pressure. Such a broad application of spike testing would be destructive to our nation's natural gas pipeline infrastructure and contradicts the GPAC's recommendations for the pending PHMSA rules, as detailed in this testimony.

Additionally, Professional Engineer licensure is not necessary for all pipeline engineers. Instead, INGAA supports the comprehensive management of change requirement in PHMSA's pending gas transmission safety rules, which was endorsed by the GPAC and will ensure competent technical review more effectively than a restrictive licensure requirement.

Finally, instead of issuing a self-executing mandate directly to pipeline operators, Congress should leverage the expertise of PHMSA and the diversity of the agency's advisory committees to evaluate whether additional pipeline safety information should be made available to first responders and to the public. INGAA shares the Subcommittee's frustration that PHMSA has been delayed in completing new rulemakings in recent years. But rather than bypassing our

nation's pipeline safety regulator and expert advisory committees through self-executing mandates, Congress should work to strengthen PHMSA's rulemaking capabilities in this reauthorization. Therefore, we strongly support solutions such as the Subcommittee's direct hire proposal.

Third, INGAA is concerned about changes that would undermine the PHMSA rulemaking program by eliminating important aspects of the decision-making process.

For example, Congress should retain the cost-benefit analysis requirement in the Pipeline Safety Act. Since there are usually multiple practical alternatives to achieve any particular pipeline safety objective, a cost-benefit analysis helps PHMSA and stakeholders to compare the alternatives and identify the best option. No PHMSA regulation has ever been overturned on the basis of the cost-benefit analysis, further demonstrating that the Act currently provides a clear, legally-defensible standard for cost-benefit analyses. Nor is there any indication that the requirement to complete a cost-benefit analysis is causing the rulemaking delays at PHMSA in recent years.

Additionally, adding a mandamus provision to the Pipeline Safety Act would not enhance pipeline safety. Pipeline safety is a highly technical and complex area of the law. Regulatory agencies with specific subject matter expertise, not the courts, are best positioned to make decisions regarding how to regulate pipelines and ensure public safety. Congress previously chose not to add a mandamus provision in the Pipeline Safety Act and has sufficient oversight tools to ensure the agency meets its statutory obligations.

Fourth, several of the legislative proposals would make unnecessary or harmful changes to the enforcement provisions in the Pipeline Safety Act. These proposals do not have a direct link to pipeline safety, and INGAA is concerned that they will encourage litigation and nondisclosure at the expense of collaboration and safety culture.

There is no indication that the existing criminal provision for operator violations needs to be modified. Federal prosecutors have successfully brought criminal cases against pipeline operators where appropriate and there is no evidence that the current statutory language has created a bar to criminal prosecution.

Similarly, PHMSA's civil penalty authority is not lacking. The current civil penalty limits in the Pipeline Safety Act exceed those in many other health, safety, and environmental protection statutes. Furthermore, PHMSA is authorized to issue corrective action orders, safety orders, and compliance orders to pipeline operators, in addition to civil penalties. These orders can provide an immediate safety benefit to communities along the pipeline, and the cost to comply with these orders is often significantly greater than any associated civil penalty. PHMSA can also refer the most serious administrative cases to the U.S. Department of Justice for civil action where the administrative caps would not apply.

DETAILED TESTIMONY

1. **INGAA strongly supports updating the Pipeline Safety Act to reflect current technologies and engineering practices.**

INGAA members continue to incorporate new technologies and advanced engineering practices that enhance our pipeline safety performance. However, many PHMSA regulations were created decades ago and are outdated. While these regulations reflect the technology and best approach available at the time of adoption, they have not kept pace and now hinder pipeline operators in implementing 21st-century pipeline safety programs.

INGAA supports PHMSA's legislative proposal to implement a new pipeline safety technology pilot program.

PHMSA needs a program where it can collaborate with pipeline operators to test the application of new technologies and analytical approaches. One of the last steps in confirming whether a new technology is beneficial is to test it in real-world conditions. A transparent, supervised pilot program would allow PHMSA to develop field data that could then be used to support potential changes to the regulations. PHMSA's proposed pilot program[1] would be similar to current DOT authority to pilot test programs for motor carriers.[2]

At the conclusion of each pilot program, INGAA recommends that PHMSA issue a report to Congress regarding the findings and recommendations of the program, including suggested amendments to laws, regulations or standards that would enhance the safe operation of pipeline facilities and are technically, operationally, and economically feasible.

INGAA supports PHMSA's legislative proposal for timely incorporation of consensus technical standards by reference.

PHMSA incorporates over 60 standards by reference into its regulations. Unfortunately, PHMSA regulations currently reference technical standards that are many years or even decades old. For example, the foundational document for a gas pipeline integrity management program is the American Society of Mechanical Engineers' Standard B31.8S.[3] PHMSA's regulations currently incorporate the 2004 edition of B31.8S.[4] In the fifteen years that have transpired since this edition was published, there have been five new editions, including one published last year. These updates are critical because they reflect input from our nation's best pipeline engineers and support the leading industry practices in construction, operations, inspections, and maintenance.

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[1] PHMSA Legislative Proposal for the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2019, § 6, https://www.phmsa.dot.gov/news/protecting-our-infrastructure-pipelines-and-enhancing-safety-act-2019-section-section-analysis.

[2] *See* 49 USC 31315 & 31136(e).

[3] ASME, B31.8S Managing System Integrity of Gas Pipelines (2018).

[4] 49 C.F.R. § 192.7(c)(6)(2018).

PHMSA's legislative proposal[5] will help ensure that the agency is continually focused on keeping its regulations up-to-date.

Congress should support PHMSA's proposed update to the class location change regulations in the reauthorization bill.

In the previous reauthorizations of the pipeline safety program, Congress directed PHMSA to consider updating the class location change regulations.[6] Last year, PHMSA initiated a rulemaking on class location changes.[7] In the 2019 reauthorization bill, Congress should direct PHMSA to complete its ongoing rulemaking to update the class location change regulations.

The class location change regulations, first published in 1970, are based on industry standards from 1955, and have not been substantively updated since. These regulations often require operators to replace pipe when new structures are built near an existing pipeline, regardless of the pipe's condition. It makes little sense to require the removal and replacement of safe, operable pipe solely for purposes of compliance with a regulation that was issued before most of the industry's inspection technology was invented. Pipeline safety can be managed effectively today through data-driven inspection and maintenance rather than wholesale pipe replacement requirements.

These unnecessary replacement projects can disrupt natural gas service and require releases of natural gas into the atmosphere. INGAA estimates that up to 800 million standard cubic feet of natural gas is released every year due to class location change pipe replacements, which is equivalent to the annual natural gas use of over 10,000 homes and the annual greenhouse gas emissions of over 80,000 passenger vehicles.

Operators spend $200-$300 million annually replacing pipe under the current class location change regulations. Unfortunately, we have little to show for these expenditures – less than 75 miles of pipe are replaced each year due to the class change regulations (less than 0.1% of all gas transmission pipeline mileage). There are much more productive ways to invest these substantial resources and enhance safety. For the same cost of replacing 75 miles of pipe, we could instead assess 25,000 miles (8% of the system) with internal inspection devices. These types of assessments allow operators to learn a great deal about the condition of their whole pipeline network, in addition to addressing the particular pipe where the class location happens to have changed.

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[5] PHMSA, Legislative Proposal for the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2019, § 17

[6] Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90. § 5, 125 Stat. 1904, 1907; Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016, Pub. L. No. 114-183. § 4(b)(2), 130 Stat. 517.

[7] Pipeline Safety: Class Location Change Requirements, 83 Fed. Reg. 36,861 (July 31, 2018).

2. <u>INGAA is concerned that several of the recent legislative proposals would overrule years of work in developing new pipeline safety regulations for gas transmission pipelines. Some of these proposals would either contradict recent rulemaking recommendations from PHMSA's advisory committees or bypass the advisory committees altogether.</u>

INGAA strongly supports PHMSA's Federal Advisory Committee process. It is critical that Congress look to the expert recommendations of the advisory committees when updating the Pipeline Safety Act, not contradict those recommendations. Furthermore, Congress should allow PHMSA and the advisory committees to evaluate new technical proposals, rather than issue self-executing mandates directly to pipeline operators.

PHMSA's GPAC is an advisory committee to the Department of Transportation and to PHMSA on matters of natural gas pipeline safety and regulatory oversight. The GPAC is comprised of 15 members, with equal representation from the natural gas industry, federal and state agencies, and the public (such as safety advocates and emergency managers). The stated role of the GPAC is to review PHMSA's proposed regulatory initiatives to ensure the technical feasibility, reasonableness, cost-effectiveness and practicability of each proposal. This consultation is required by the Pipeline Safety Act.[8]

GPAC performs an important role in completing our shared objective to enhance gas pipeline safety regulations. Stakeholder dialogue is especially important when the subject of a rulemaking is a complex, technical topic such as pipeline safety regulation. New rules should leverage stakeholder knowledge and expertise to facilitate the deployment of new technologies and practices that are more effective, more efficient, and less disruptive than the legacy methods that may be reflected in existing regulations.

The Subcommittee's proposed changes to the Maximum Allowable Operating Pressure (MAOP) requirements contradict PHMSA's pending gas transmission integrity rules and multiple years of advisory committee discussions.

The Department of Transportation is finalizing a rulemaking to fulfill many of the gas transmission pipeline safety mandates that were at the center of the last two Pipeline Safety Act reauthorizations. This rulemaking represents the most significant enhancement to gas transmission pipeline safety regulations since the federal code was first promulgated in 1970. This comprehensive update to PHMSA's gas transmission regulations will make great strides in incorporating modern technologies and engineering practices into our nation's pipeline safety program. INGAA members strongly support prompt completion of these new regulations.

PHMSA conducted a series of GPAC meetings in 2017 and 2018 to consider the pending gas transmission pipeline safety rules. During these meetings, PHMSA and the GPAC succeeded in

[8] *See* 49 U.S.C. § 60102.

building broad consensus around many important and challenging gas transmission pipeline safety topics. As evidence of a process that works, several organizations that participated in the GPAC meetings recently sent a letter to Secretary Chao to express our support for expeditiously publishing a final gas transmission rule to address the outstanding congressional mandates. The signatories included INGAA, other pipeline trade associations, and public safety advocacy groups. Such consensus would not have been possible prior to the GPAC meetings.

INGAA is concerned that a number of the legislative proposals would overrule these multi-year efforts of PHMSA and GPAC. In the 2011 Act, Congress directed PHMSA to issue regulations to reconfirm the MAOP (material strength) of previously untested natural gas transmission pipelines located in high-consequence areas and operating at a pressure greater than 30 percent of specified minimum yield strength.[9] PHMSA subsequently recognized that MAOP reconfirmation could provide important safety benefits beyond high consequence areas. After debate and discussion, the GPAC unanimously endorsed extending this requirement to all high consequence areas, all class 3 and class 4 locations, and certain class 1 and class 2 locations.[10] The approach proposed by PHMSA and endorsed by the GPAC appropriately balances the benefits of MAOP reconfirmation with the drawbacks of the hydrostatic pressure testing that is usually required to reconfirm MAOP. Drawbacks of hydrostatic pressure testing include disruptions to natural gas customers, methane emissions, and test water discharges.

The Maximum Allowable Operating Pressure statute should not be modified. Since PHMSA and the GPAC have already agreed to an appropriate expansion of the MAOP reconfirmation requirements beyond high consequence areas, INGAA encourages Congress to support this approach and not further expand the application of a legacy inspection method like hydrostatic testing.[11] In this reauthorization, Congress should instead incentivize more modern pipeline assessment methods, such as in-line inspection, which are more effective, more efficient, and less disruptive.

Furthermore, the Subcommittee's proposal to require all natural gas transmission pipelines to undergo a spike hydrostatic pressure test has no engineering basis and again contradicts the GPAC's recommendations. Spike testing was designed as a pipeline integrity assessment technique with a very specific purpose: to expose significant time-dependent linear defects on certain susceptible pipelines. While spike testing is an important pipeline safety tool where time-dependent cracking is a threat, it is not relevant to confirming MAOP.

Such a broad application of spike testing would be destructive to our nation's natural gas pipeline infrastructure. Spike testing is an aggressive technique that imparts significant stresses on the pipeline, its components, and the testing equipment. This can increase the risk of failures of

[9] Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, § 23(a), 125 Stat. 1919.
[10] *See* GPAC Meeting Final Voting Slides at 1 (Mar. 26-28, 2018), https://primis.phmsa.dot.gov/meetings/FilGet.mtg?fil=966.
[11] *See* Subcommittee Discussion Draft for the Safer Pipelines Act of 2019, § 10(2), http://docs.house.gov/meetings/IF/IF03/20190619/109651/BILLS-116pih-TheSaferPipelineActof2019.pdf.

piping and components that would otherwise pose no threat during the service life of the pipeline. Such failures would require repairs and cause other adverse effects, such as further customer service disruptions.

As part of the pending gas transmission integrity rules, the GPAC unanimously endorsed requirements for applying spike testing to pipelines susceptible to time-dependent cracking, but not for MAOP reconfirmation.[12] In fact, PHMSA noted that the agency "would not expect the use of spike test other than to address time dependent cracking threats."[13] The Subcommittee should allow PHMSA to complete its pending rulemaking and withdraw its proposal to require all gas transmission pipelines to undergo a spike test.[14]

Direct assessment is an important pipeline safety tool and should be retained.

Direct assessment is an important tool to manage pipeline integrity. Direct assessment has demonstrated success in finding features that warrant evaluation and repair, in particular on pipelines that cannot accommodate in-line inspection and where hydrostatic pressure testing would significantly disrupt customer access to natural gas.

Direct assessment is a predictive tool that identifies areas where corrosion could occur, while other assessment methods can only detect where corrosion has resulted in measurable metal loss. The direct assessment process is rigorous by design and requires operators to gather, integrate and analyze pipeline data. Congress should use this reauthorization as an opportunity to accelerate the development and deployment of new inspection technologies, not remove valuable tools from the pipeline safety portfolio.

PHMSA and the GPAC considered restrictions on direct assessment as part of the pending gas transmission integrity rule. After deliberation, PHMSA and the GPAC agreed to retain direct assessment as an assessment method for threats to which it is suitable.[15] Congress should also retain the ability to use direct assessment in the Pipeline Safety Act.[16]

Professional Engineer (PE) licensure is not necessary for all pipeline engineers.

Ensuring that competent technical staff review changes to the pipeline system is critical. However, a broad PE requirement does not ensure competent review.[17] We are a complex and

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[12] *See* GPAC Meeting Final Voting Slides at 3 (Mar. 26-28, 2018), https://primis.phmsa.dot.gov/meetings/FilGet.mtg?fil=966.
[13] PHMSA, Safety of Gas Transmission and Gathering Pipelines at 14, GPAC Meeting (Mar. 2, 2018), https://primis.phmsa.dot.gov/meetings/FilGet.mtg?fil=938.
[14] *See* Subcommittee Discussion Draft for the Safer Pipelines Act of 2019, § 10(4).
[15] GPAC Meeting Final Voting Slides at 2,5 (Mar. 2, 2018), https://primis.phmsa.dot.gov/meetings/FilGet.mtg?fil=939.
[16] *See* Subcommittee Discussion Draft for the Safer Pipelines Act of 2019, § 5(a).
[17] *See* Leonel Rondon Pipeline Safety Act, H.R. 2139 and S. 1097, 116th Cong. § 6 (2019) (identical text in both bills).

diverse industry where many different technical competencies are required – no one license or certification can come close to covering all that we do. There are already requirements in PHMSA's gas transmission regulations requiring the use of competent and qualified engineers for integrity management tasks.

Furthermore, the focus on competency will be greatly expanded in the pending gas transmission integrity rules. Importantly, the pending rules will extend comprehensive management of change (MOC) requirements to all gas transmission pipelines. These new requirements have been endorsed by the GPAC.[18] A critical part of an MOC process is ensuring review by competent, qualified, subject matter experts. INGAA is fully supportive of this new requirement and believes it is superior to a specific PE requirement. Since different types of changes require different types of knowledge and skills to review, linking engineer competency requirements to the MOC process will ensure that operators seek out the right personnel based on the type of change.

Congress should utilize PHMSA and its advisory committees to identify the pipeline safety information that should be made available to first responders and the public.

The Subcommittee's discussion draft proposes a self-executing mandate that would direct pipeline operators to provide extremely voluminous materials to first responders and to the public.[19]

INGAA strongly agrees that liaising with first responders is critical and this is already required by PHMSA regulations. However, there is no indication that first responders are not receiving the information they require or request from gas transmission pipeline operators. We do not see a public safety benefit in asking first responder commissions/committees to maintain and manage voluminous sets of pipeline operating documents. Instead, INGAA members want to invest time into developing relationships and sharing key emergency response documents so that we are prepared to work collaboratively with first responders in the event of an incident.

Our experience is that first responders wish to maintain a strong relationship with the key personnel in operating companies, understand operators' protocol for shutting off pipelines during an emergency, and know where to establish an appropriate protective perimeter surrounding a pipeline incident. It is also valuable for emergency responders and pipeline operators to have trained together through emergency response tabletop exercises and, when available, field emergency response drills under a unified incident command structure.

Regarding pipeline safety information that is available to the general public, operators already make a significant amount of pipeline safety information publicly available, including some of the information listed in the legislative proposal. INGAA acknowledges that making additional

[18] GPAC Meeting Final Voting Slides at 16 (Jan. 11-12, 2017), https://primis.phmsa.dot.gov/meetings/FilGet.mtg?fil=865.
[19] *See* Subcommittee Discussion Draft for the Safer Pipelines Act of 2019, § 6 (proposed 49 U.S.C. § 60116(b), (d), (f)).

information publicly available may be appropriate. However, we question whether some of the proposed information would be useful to the public, particularly where the burden to make this information publicly available is significant (for example, entire integrity management plans, anomaly remediation data, and individual reports for each segment of the pipeline). Also, some of this information could be categorized as proprietary business or sensitive security information.

Instead of issuing a self-executing mandate on this topic, Congress should leverage the expertise of PHMSA and the diversity of the agency's advisory committees to evaluate and determine whether and which additional information should be made available to first responders and to the public. Since the advisory committees include emergency managers, public safety advocates, state and federal regulators, and pipeline operators, the committees are well-suited to ensure that first responders have access to the pipeline safety information that they need. Similarly, INGAA believes that the advisory committees would help PHMSA to identify an appropriate balance between citizens' rights to understand the pipelines in their communities, pipeline companies' business needs, and security concerns.

Regarding security concerns, INGAA appreciates that the Subcommittee's discussion draft acknowledges that public availability of certain pipeline information could "pose a risk to the security of the pipeline facility."[20] We also encourage Congress to take action to deter tampering with or vandalizing pipelines.[21] Such actions can create serious safety risks for the public, pipeline employees, and the perpetrators. Tampering with or vandalizing pipelines could also have devastating environmental impacts.

Rather than resort to self-executing mandates, Congress should improve PHMSA's rulemaking process.

INGAA shares the Subcommittee's frustration that PHMSA has been delayed in completing new rulemakings in recent years. But rather than bypassing our nation's pipeline safety regulator and expert advisory committees in important policymaking, Congress should work to strengthen PHMSA's rulemaking capabilities in this reauthorization. INGAA believes that additional engineering and rulemaking staffing could help accelerate PHMSA's rulemaking process. Therefore, we strongly support solutions such as the Subcommittee's direct hire proposal.[22]

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[20] *See* Subcommittee Discussion Draft for the Safer Pipelines Act of 2019, § 6 (proposed 49 U.S.C. § 60116(f)(3).
[21] *See, e.g.,* PHMSA Legislative Proposal for the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2019, § 18, https://www.phmsa.dot.gov/news/protecting-our-infrastructure-pipelines-and-enhancing-safety-act-2019-section-section-analysis.
[22] *See* Subcommittee Discussion Draft for the Safer Pipelines Act of 2019, § 11.

PHMSA's legislative proposal regarding voluntary information sharing should be updated to reflect the Voluntary Information Sharing System Working Group's final report.

INGAA supports the creation of a PHMSA voluntary information sharing system.[23] Such a system could provide an opportunity to enhance pipeline safety by allowing pipeline operators, technology providers, regulators, academics, labor representatives, public advocates, and other stakeholders to anonymously and confidentially share information to enhance pipeline safety. Similar information systems have been successful in improving safety in other industries, such as the airline industry.

PHMSA assembled a new advisory committee that worked for three years to develop recommendations for designing, governing, and protecting the voluntary information sharing system. Committee members included Federal and state regulators, pipeline operators, inspection technology experts, coating and cathodic protection service providers, pipeline inspection organizations, safety advocacy groups, research institutions, labor representatives, and other entities. The committee's final report provided a series of "balanced recommendations that appropriately protect the voluntarily reported information while also ensuring that the recommended regulatory/legislative framework does not provide a means for pipeline operators to purposefully avoid regulatory obligations."[24] Unfortunately, this final report was not available when PHMSA developed its legislative proposal, and therefore key recommendations from the advisory committee were not included in that proposal. Congress should authorize the voluntary information sharing system in the Pipeline Safety Act and ensure that the Act reflects the advisory committee's legal, governance, and funding recommendations.

3. <u>Some of the legislative proposals would undermine the PHMSA rulemaking program by eliminating important aspects of the decision-making process.</u>

Congress should retain the cost-benefit analysis requirement in the Pipeline Safety Act.

Removing the mandate in the Pipeline Safety Act to perform a cost-benefit analysis[25] will weaken, not strengthen, the fundamental purpose of the Act – to ensure pipeline safety. It is sensible for agencies to perform a reasoned analysis before making significant regulatory changes. The existing framework in the Pipeline Safety Act by which PHMSA conducts cost-benefit analysis is important for an effective review of proposed regulations.[26] Since there are typically multiple practical alternatives to achieve any particular pipeline safety objective, a cost-benefit analysis helps PHMSA and stakeholders to compare the alternatives and identify the best option. There is

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[23] *See* PHMSA Legislative Proposal for the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2019, § 5, https://www.phmsa.dot.gov/news/protecting-our-infrastructure-pipelines-and-enhancing-safety-act-2019-section-section-analysis.

[24] PHMSA Voluntary Information-Sharing System Working Group, VIS Recommendation Report at 6-7 (June 10, 2019), https://www.phmsa.dot.gov/standards-rulemaking/pipeline/vis-recommendation-report.

[25] *See* Subcommittee Discussion Draft for the Safer Pipelines Act of 2019, § 4(a).

[26] *See* 49 U.S.C. §§ 60102(b)(2)(D), § 60102(b)(3).

no indication that preparing cost-benefit analyses has caused the recent PHMSA rulemaking delays.

The Pipeline Safety Act requires PHMSA to submit its cost-benefit analysis of a proposed rule for peer review by one of PHMSA's advisory committees. This provides a unique opportunity for public discussion and input regarding the impacts of proposed rules. Furthermore, the Pipeline Safety Act provides clear and specific direction to PHMSA regarding how the agency's rulemakings must comply with various Executive Orders that require a cost-benefit analysis for significant regulatory actions.[27] The requirement under the Pipeline Safety Act to conduct a cost-benefit analysis is consistent with other environmental, health and safety statutes,[28] but the transparent and specific framework provided by the Pipeline Safety Act is superior. No PHMSA regulation has ever been overturned on the basis of the cost-benefit analysis requirement in the Pipeline Safety Act, indicating that the Pipeline Safety Act provides a clear, legally-defensible standard for cost-benefit analyses.

Adding a mandamus provision to the Pipeline Safety Act is unnecessary and would not enhance pipeline safety.

Mandamus-type provisions have a track record of bogging agencies down in expensive, time-consuming litigation. If there is a concern that PHMSA is delayed in completing Congressional mandates, then overwhelming the agency with litigation will not improve the situation. Pipeline safety is a highly technical and complex area of the law. The regulatory agency with specific subject matter expertise, not the courts, is best positioned to make decisions regarding how to regulate pipelines and ensure public safety.

There is no need for an amendment to section 60121 because the Pipeline Safety Act currently allows private citizens to pursue enforcement for violations when PHMSA is not diligently pursuing a matter. Section 60121 of the Pipeline Safety Act provides that a private citizen can seek an injunction "for a violation of this chapter or a regulation prescribed or order issued under this chapter."[29] Further, a citizen can use section 706(1) of the Administrative Procedure Act to compel

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[27] PHMSA, like all federal executive agencies, is required to perform a cost-benefit analysis on significant regulatory actions under Executive Order 12866 issued by President Clinton on September 30, 1993, 58 Fed. Reg. 51,735 (Oct. 4, 1993) and Executive Order 13563 issued by President Obama on January 18, 2011, 76 Fed. Reg. 3821 (Jan. 21, 2011).

[28] For example, the Federal Mine Safety and Health Act (Mine Act) requires the Mine Safety and Health Administration (MSHA) to conduct a cost-benefit analysis as part of its rulemaking process. (30 U.S.C. § 811(a)(1)). MSHA is required to request the recommendations of an Advisory Committee (similar to PHMSA's technical advisory committees) appointed under Section 102(c) of the Mine Act for any regulation that will have a significant economic impact. (30 U.S.C. §§ 811(a)(1), 812(c)). As another example, Section 301 of the Clean Water Act requires the Environmental Protection Agency (EPA) to select the "best available technology economically achievable" (33 U.S.C. § 1311(b)(2)(A)), and then requires EPA to take into account the cost of achieving effluent reductions when assessing best available technology (33 U.S.C. § 1314(b)(2)(B)).

[29] 49 U.S.C. § 60121(a)(1).

agency action that an agency was required to take, which has been unlawfully withheld or unreasonably delayed.[30]

As recognized by the 9th Circuit in the *City and County of San Francisco v. U.S. Dept of Transp.,* Congress intentionally chose not to include a mandamus-type remedy in the Pipeline Safety Act's citizen suit provision.[31] In fact, the Senate Committee on Commerce stated at the time the citizen suit provision was introduced that it "would not supplant the Secretary's efforts for enforcement and compliance" but rather was "designed to assist the Department in its enforcement and compliance activities."[32] Congress has sufficient oversight tools to ensure the agency meets its statutory obligations.

4. **Several of the legislative proposals would make unnecessary or harmful changes to the enforcement provisions in the Pipeline Safety Act. These proposals do not have a direct link to pipeline safety, and INGAA is concerned that they will encourage litigation and nondisclosure at the expense of collaboration and safety culture.**

INGAA believes that the Pipeline Safety Act reauthorization provides an opportunity to promote a strengthened safety culture within the pipeline industry and encourage collaborative efforts between operators, regulators, and the public. PHMSA's legislative proposal includes several examples of tangible steps that will directly enhance pipeline safety by focusing on strengthening safety culture and collaboration. For example, INGAA supports PHMSA's proposals regarding pipeline safety pilot program,[33] a voluntary information sharing system,[34] a safety incentives program,[35] state pipeline safety program grants,[36] public awareness and cooperative activities,[37] and joint inspection and oversight.[38]

However, we believe that some of the legislative proposals will only serve to encourage a focus on litigation and a culture of nondisclosure, rather than enhancing pipeline safety.

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[30] *See Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 64 (2014).
[31] *City & Cty, of San Francisco v. U.S. Dep't of Transp.*, 796 F.3d 993 (9th Cir. 2015).
[32] S.Rep No. 94-852, at 8 (1976).
[33] *See* PHMSA Legislative Proposal for the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2019, § 6, https://www.phmsa.dot.gov/news/protecting-our-infrastructure-pipelines-and-enhancing-safety-act-2019-section-section-analysis.
[34] *Id.* at § 5.
[35] *Id.* at § 3.
[36] *Id.* at § 7.
[37] *Id.* at § 10.
[38] *Id.* at § 19.

The current criminal liability standard for pipeline operators in the Pipeline Safety Act is appropriate.

Intentional violations of the federal pipeline safety regulations should not be condoned, but the criminalization of non-intentional conduct is unwarranted. The current criminal penalty provision in 49 U.S.C. § 60123(a) should not be modified to include "recklessness."[39]

The standard included in the criminal provisions of most transportation safety laws is limited to knowing and willful violations, with the exception of the transportation of hazardous materials and certain aviation violations.[40]

There are important differences between the risk-based pipeline regulations and the prescriptive hazardous materials regulations. Pipeline safety regulations and programs require operators to assess the threats to their pipeline system and then perform preventative maintenance based on a prioritization of risk. Expanding criminal liability to include "recklessness" would remove the need to prove intentional wrongdoing and risks criminalizing good-faith, reasonable decisions that pipeline operators make when they identify, assess, and manage pipeline risk priorities.

Furthermore, promotion of a culture that encourages self-disclosure and self-reporting is key to enhancing safety in the pipeline industry. If Congress were to add a "recklessness" component to the criminal standard in the Pipeline Safety Act, the threat of criminal prosecution could discourage pipeline operators from openly sharing concerns with PHMSA.

The government's use of the current criminal penalty provision in 49 U.S.C. § 60123 demonstrates that amendments to the provision are unnecessary at this time. In 2017, a federal judge sentenced Pacific Gas & Electric on six criminal charges and imposed the maximum criminal penalty after a deadly pipeline incident in San Bruno, California. There is no indication that a recklessness standard is needed based on the outcome of this case.

The current civil penalty limits in the Pipeline Safety Act are appropriate.

INGAA members are committed to attaining a perfect safety record – zero incidents. This requires operators to comply with all applicable regulations, but it also requires operators to evolve their safety programs beyond the minimum regulations to reflect advances in technology and engineering. The potential for excessively punitive fines[41] will bring a lopsided focused on compliance with the minimum regulations, diverting resources away from innovative programs and detracting from our focus on improving overall safety performance. A dramatic increase in

[39] *See* Subcommittee Discussion Draft for the Safer Pipelines Act of 2019 § 9.
[40] *See e.g.,* 49 U.S.C. § 30170 (Highway and Motor Vehicle Safety); 49 U.S.C. § 21311 (Railroad Safety); 49 U.S.C. § 526 (Motor Carrier Safety); 30 U.S.C. § 820 (Mineral Lands and Mining).
[41] Subcommittee Discussion Draft for the Safer Pipelines Act of 2019, § 8; Leonel Rondon Pipeline Safety Act, H.R. 2139 and S. 1097, 116th Cong. § 6 (2019) (identical text in both bills).

civil penalties could also discourage operators from self-reporting compliance issues. Self-reporting is a useful mechanism in PHMSA's compliance toolbox.

PHMSA's civil penalty authority is not lacking. The agency's maximum civil penalty authority was increased in 2018 to $2,132,679 for violations related in a series. PHMSA not only has its administrative civil penalty authority but it can also refer the most serious cases to the U.S. Department of Justice to initiate a civil action where the administrative caps would not apply.

PHMSA can also issue corrective action orders, safety orders, and compliance orders to pipeline operators. PHMSA's authority includes the ability to order the shutdown of a pipeline, require immediate repairs, and require emergency actions from the entire industry. These orders often extend beyond the specific location of a violation or incident to determine whether the safety issue has been addressed across the operator's entire pipeline system, providing an immediate benefit to communities along the pipeline. These orders can embrace the latest technology and engineering practices. The cost to comply with these orders is often significantly greater than any associated civil penalty.

A significant increase in penalty levels would also be inconsistent with other environmental, health, and safety statutory schemes. The Hazardous Materials Transportation Act sets a maximum civil penalty of $75,000 for knowing violations, and $175,000 if a violation results in death, serious injury, or property destruction.[42] The maximum civil penalty amount under the Federal Aviation Act is $400,000.[43] Maximum administrative civil penalties under the Clean Air Act are $47,357 per day up to $378,852.[44]

Regulating Pipeline Safety Management Systems (SMS) risks limiting their effectiveness.

The pipeline industry is currently implementing pipeline SMS in the absence of a regulatory requirement to do so. Regulating pipeline SMS[45] would undercut and limit its safety benefits.

SMS is an innovative approach to enhancing safety. Pipeline SMS concepts are new to our industry and continue to evolve. Setting fixed compliance standards would lock Pipeline SMS in its current state, limiting companies' abilities to improve beyond regulatory requirements.

SMS regulations would switch operator personnel from a focus on searching for new ways to improve safety to a focus on compliance with static regulatory requirements, limiting the safety benefits of SMS. PHMSA auditing of SMS compliance would force evaluations into simplistic one-size-fits-all audit approach, limiting pipeline SMS effectiveness. Furthermore, SMS regulatory obligations with punitive consequences would hamper safety cultures that encourage the identification of safety weaknesses.

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[42] 49 U.S.C. § 5123(a).
[43] *Id.* § 46301(d)(2).
[44] 42 U.S.C. § 7413(d).
[45] *See* Proposed Leonel Rondon Pipeline Safety Act, § 5(s)(1).

It is worth noting that some elements of SMS are appropriate for regulation, and are already required PHMSA. For example, pipeline assessment programs, public awareness, operational procedures, and management of change are important elements of an SMS and are regulated by PHMSA. But some SMS elements, such as fostering a safety culture, do not fit into a traditional compliance-based regulatory regime.

5. Miscellaneous Topics

INGAA supports PHMSA funding levels consistent with recent years.

INGAA supports funding PHMSA at a level consistent with fiscal year 2018. The regulatory and inspection work of PHMSA and its state partners is important to ensuring pipeline safety.

In general, INGAA believes that PHMSA's overall funding level in recent years has been sufficient. We do not see a need for a significant increase in funding. Predictability in annual user fee levels is important so that transmission operators can anticipate these costs. PHMSA's pipeline safety budget, including the state grant budget, is almost entirely funded by user fees paid by gas and liquid transmission operators.

Thank you again for the opportunity to testify today. INGAA appreciates the important work that the Subcommittee is undertaking to ensure the safety of our nation's pipeline infrastructure. We look forward to working with the Subcommittee to support a reauthorization bill that enhances pipeline safety in America.

Mr. RUSH. The Chair thanks all of the witnesses for their opening statements. We've now concluded opening statements, and we will now move toward Member questioning.

Members will have 5 minutes to ask questions about witnesses and I will start this process by recognizing myself for 5 minutes.

Mr. Lesniak, in your testimony you note that currently Section 60132 exempts gathering lines from the National Pipeline Mapping system, meaning that there is no way to know exactly where these lines are actually located.

Can you discuss with us the main differences between transmission lines, which are regulated, and gathering lines, which are not?

Do gathering lines pose a similar public safety risk as transmission lines and, if so, does the language in the discussion draft help address this issue or is there additional language needed to regulate these lines and make them a part of the mapping system?

Mr. LESNIAK. Thank you for that question.

I spent a good part of my career with the city of Austin as emergency responder and these gathering lines, many of them, are indistinguishable from gas transmission pipelines, and they ought to be—at least the location and basic information about these lines ought to be available to local governments, local emergency responders, and the general public.

To me, it makes no sense that I can go online using the National Pipeline Mapping System and find out where gas transmission lines are in my community and emergency responders can do the exact same thing so that they can be prepared to respond to those kinds of incidents on those pipelines, but a gathering line with the exact same type of characteristics that information is not available to local emergency responders.

And so the answer is yes, I think that that's a critical piece of the proposed bill and is critical to keeping our community safe.

Mr. RUSH. I want to go to the issue of working with issues at PHMSA. Specifically, does PHMSA have the sufficient number of professional staff with the right expertise to handle all of the responsibility that falls under the agency's jurisdiction including conducting pipeline inspection and finalizing its rulemaking?

Again, does the discussion draft help address this issue and are there other provisions that we should consider adding to this bill?

Mr. LESNIAK. You know, in my opinion, I think PHMSA is chronically underfunded and understaffed. They compete with the industry, with—for expertise and struggle with keeping that expertise within the agency as they develop experts.

And so I think the direct hire provision in the discussion draft is very helpful for that. I think that many of the stakeholders, industry and pipeline safety advocates, share that concern about PHMSA's staffing, and anything that Congress can do to facilitate hiring and retention of critical staff for PHMSA is a good thing and this bill goes in that direction.

Mr. RUSH. And then, Mr. Lesniak, Section 6 of the discussion draft entitled "Community Right to Know in Emergency Preparedness" is designed to make critical operational information available to local communities and to first responders.

Additionally, Mr. Lesniak, Section 6 of H.R. 2139 requires the production and maintenance of complete up-to-date records of distribution systems and the requirement that these records be available to the relevant regulators.

While these provisions would strengthen the engagement of pipeline operators with local emergency planning committees and local first responders while also providing the public with frequently requested information, why are these so critical to both safety reasons and building the public trust?

Mr. LESNIAK. And, again, as based on my career as a first responder, you know, I was surprised when I got involved in pipeline issues how difficult it was to get really critical technical information about pipelines in our community.

It really is dependent on the operator of that pipeline and you have got operators that are much more open about sharing technical information about their pipelines and you have got operators that just refuse to provide essentially any information at all that they're not required to provide by statute.

And so anything that Congress can do to level that playing field so that local first responders can get that information about the pipelines in their communities is critical because of the things that I found, working with the Austin, Texas, fire department is they know very little about the pipelines in their community.

The pipeline operators historically in our community provide just the very basic awareness of information and if an incident were to happen in our community I think that our first responders would be woefully unprepared and that information ought to be provided to them on a routine basis.

Mr. RUSH. Thank you.

The Chair now recognizes the ranking member, Mr. Upton, for 5 minutes.

Mr. UPTON. Thank you, Mr. Chairman, and I do have a lot of questions and I am going to try to keep my questions brief and, hopefully, your answers will be brief so I can go through them.

But I am going to formally draft these up as a letter to each of you for you to formally respond and if you can do that as quickly as you can, knowing that we are on somewhat of a timetable here that would be good.

Mr. Osman, you made a good point in your testimony about the draft legislation's removal of the cost-benefit analysis and inclusion of mandamus civil suits speeding up the pace of PHMSA's rulemaking.

I appreciate that. Does—in your opinion, does the draft legislation encourage collaboration among pipeline safety stakeholders and advisory committees during consideration of any new regulations?

Mr. OSMAN. No, not as much as it could.

Mr. UPTON. And Ms. Sames—Ms. Sames, does the draft legislation preserve effective State pipeline replacement and upgrade programs?

I say that because we replaced a pipeline a number of years ago in Michigan, which as a good thing, and the old pipeline was left in place. But how does this draft legislation impact something like that?

Ms. SAMES. It doesn't address it.

Mr. UPTON. Mr. Black, does the draft legislation authorize PHMSA to allow operators to incorporate new safety technologies or best practices that may not be addressed in the regulations?

Mr. BLACK. No.

Mr. UPTON. And does the draft legislation address the safety of inactive pipelines at all or not?

Mr. BLACK. No.

Mr. UPTON. Does the draft legislation incentivize the timely updating of regs to incorporate the latest industry standards?

Mr. BLACK. No, and we wish it would.

Mr. UPTON. And can you provide us maybe with some constructive language? And does the draft legislation discourage folks from attacking pipeline facilities, something I think a lot of us are concerned about?

Mr. BLACK. No, and we wish it would.

Mr. UPTON. And what does the draft do on cybersecurity?

Mr. BLACK. It doesn't have any provisions on cybersecurity.

Mr. UPTON. Does the draft legislation preserve and support the years of ongoing work to update both gas and liquid pipeline regulations?

Mr. BLACK. Not directly, no.

Mr. UPTON. Mr. Osman, do you have a comment on that, too?

Mr. OSMAN. No, it contradicts it and undoes it.

Mr. UPTON. So what does it do to encourage pipeline operators to share information about the lessons learned? I mean, that's one of the things that prompted us years ago to look at pipeline accidents—what happened.

I've had some pipelines break not too far from my district, but and some also—we had a gas pipeline that broke in my district and, you know, careful effort was made to test forensically in fact what exactly happened so that improvements could be made so that we wouldn't have an issue later on in any community.

This particular incident in my home county was—thank goodness it was in a potato farm so there was nobody around. But they were able to get the evidence from that break and be able to make some recommendations.

But, to me, that's something that ought to be shared from experiences that were made or from happenings that occurred.

Mr. OSMAN. If the subcommittee were to authorize a voluntary information sharing program it would encourage discussion of incident lessons, and if the subcommittee moves forward with our criminal reckless standard it discourages that open sharing across companies.

Mr. UPTON. Yes. Does the draft legislation incentivize operators to adopt best practices or exceed minimal Federal safety standards?

Mr. OSMAN. No, and we would encourage the administration provision that calls for timely incorporation for reference.

Mr. UPTON. Have any of you looked at—I believe PHMSA actually had a proposal that we've not looked at formally—we've not had it and they're not here to testify today.

Mr. OSMAN. Yes. We support the proposal administration bill calling for regular timely incorporation into regulations of best practices.

Mr. UPTON. So one of my questions will be that I provide in writing is could each of you and your organizations take a look at that PHMSA proposal and make recommendations as this is a good thing, this is a bad thing, this is how you might alter that? Is that OK?

Mr. OSMAN. Yes.

Mr. UPTON. Mr. Lesniak, is that OK?

Mr. LESNIAK. Yes, we'd be happy to do so.

Mr. UPTON. Great. Well, I look forward to working with all of you. This is a really important issue. We have millions of miles of pipelines and we can always do better, and we need to learn from those mistakes and work together in a way to ensure that the operators and our communities in fact are safe.

And with that, Mr. Chairman, I yield back and look forward to working with you as this issue moves forward. Thank you.

Mr. RUSH. The Chair now recognizes Mr. Doyle for 5 minutes.

Mr. DOYLE. Thank you, Mr. Chairman, and welcome to our panellists today.

I appreciate the opportunity to consider legislation related to pipeline safety. Pennsylvania is in the midst of a natural gas boom which is a tremendous resource but only if it's developed in a way that protects human health and the environment.

In Pennsylvania, fracking is often very close to or within communities and pipelines run through neighborhoods and high-density areas. So I take this issue very seriously and I look forward to examining the ways to strengthen current regulations and protections.

The natural gas industry has grown rapidly in Pennsylvania in recent years while PHMSA funding for States have not kept pace.

Ms. Sames, Mr. Lesniak, or Mr. Black, do you believe that the States have sufficient resources to support enforcement in oversight of pipelines under their jurisdiction such as intrastate pipelines and the siting of hazardous liquid pipelines? And maybe you could just do down, very quickly, and answer that.

Ms. SAMES. AGA has always been supportive of more resources for the States.

Mr. LESNIAK. Yes. Pipeline Safety Trust agrees that the States are underfunded.

Mr. BLACK. States should have the resources they need.

Mr. DOYLE. So, Mr. Lesniak, you mention in your testimony the importance of additional funding for States to close the gap between the amount that PHMSA is allowed to fund State pipeline safety programs and the amount that they actually do. Can you elaborate on that?

Mr. LESNIAK. We've got more in our written testimony and we can—be happy to get you more written—more detailed information on that.

I do think it's a critical issue, especially in States like Pennsylvania and Texas, other States that have seen rapid growth in oil and gas exploration and production and we are seeing a huge boom in pipeline construction and it's clearly outpaced the abilities of States to keep up with it.

Mr. DOYLE. Pennsylvania's natural gas infrastructure dates back to the 19th century. So aging infrastructure is a concern for our region also.

Ms. Sames, in your testimony you described the progress that's been made in replacing cast iron pipe with plastic piping for distribution, main, and service lines. How are your members prioritizing the location for service upgrades and does this consider aspects such as terrain and the risk of mine subsidence as is the case in a lot of southwestern Pennsylvania?

Ms. SAMES. It covers all of that. So when you're doing replacement programs you're looking at a number of factors. You're looking at the materials, the age, the construction techniques, the environment that the pipeline is in, the environment around the pipeline and what you're learning through leak surveys.

So for things like cast iron, you want to replace the smaller lines first because those historically are the ones that are more fragile to breaking. Where you're getting larger pipelines that you have had absolutely no issues, maybe you prioritize those a little bit later because they seem to be functioning really well.

But ground movement is something that will cause an additional risk on cast iron. So you want to get rid of cast iron where there are—where there are ground movements like coal subsidence.

So yes, it's all taken into account.

Mr. DOYLE. Thank you. I co-sponsored legislation with my colleague, Mr. Olson, to address the shortage of qualified staff at FERC.

So I am glad to see language included in the Pallone bill to address the similar staffing issue at PHMSA. Can anyone please speak to the staffing needs at PHMSA and do you think that PHMSA would be able to adequately address this issue without additional authority and funding? Maybe, Mr. Lesniak, what do you think?

Mr. LESNIAK. We can certainly provide you more information on that. But as, I think, we've all mentioned, PHMSA is chronically understaffed and they have—they struggle with targeting priority areas.

Mr. DOYLE. Let me ask you also, what are your views on the process of siting hazardous pipelines? Do you think PHMSA should have a role in this process?

Mr. LESNIAK. Absolutely they should have a role. Safety is not addressed during the siting process. The agencies will tell you that are involved in siting that it's not referenced in the regulations and that PHMSA today voluntarily participates in the siting process for many pipelines. But I think it should be clearly addressed in the statute so that it's a clear responsibility for PHMSA.

Mr. DOYLE. What about you, Mr. Black? What do you think?

Mr. BLACK. PHMSA has a comprehensive series of construction codes that affect pipeline regulation—pipeline construction, excuse me.

They're there watching pipeline construction. Any pipeline that is going to go into service must pass a hydrostatic pressure test before it begins operation and PHMSA always has the authority to shut a pipeline down if it believes it's safe.

We believe there's no gap here. PHMSA has a clear role in safe operations of pipelines including construction.

Mr. DOYLE. I see my time is up, Mr. Chairman. Thank you. I yield back.

Mr. RUSH. Mr. Walden, the ranking member, is recognized for 5 minutes.

Mr. WALDEN. Good morning, Mr. Chairman.

Mr. RUSH. Good morning.

Mr. WALDEN. Thanks for having this hearing. Thanks to our witnesses for your testimony, which informs our work.

I have to confess I am a little disappointed we are moving ahead with a legislative hearing when we don't have PHMSA here today. I think we will benefit from their response to our QFRs from the prior hearing and when they can actually be here.

And so I hope we are not going to rush into a markup without thoroughly vetting to making significant improvements to this draft and I think you all have weighed in in areas you think it can be improved upon.

And so we want to get this right. We believe in pipeline safety and it needs to be a bipartisan effort as it always has been. So I want to focus on a couple of things the draft legislation deals with. And so to each of you I've got a couple of questions.

What are we doing to encourage pipeline operators to continue innovating and incorporating the most cost—the most cutting-edge technologies and best practices? Are our regulations keeping pace?

A pretty broad question, but Mr. Black?

Mr. BLACK. I will take it. The regulations are not keeping pace with innovation. PHMSA is slow. We've encouraged the committee to authorize a pilot program modelled after that they have for motor carrier.

The administration supported this. This would let them road test new technologies and approaches and update their regulations more frequently. It's very important.

Mr. WALDEN. Do each of you agree with that statement?

Ms. SAMES. I definitely agree. The process now, when new technology comes out, there's typically a pretty long delay where it has to be pilot tested. States need to weigh in. It all hampers technology enhancements quickly.

So anything that can be done to advance that. I think the administration bill does have information on a pilot on new technology. I know I am supportive of it. We want to get technology out faster.

Mr. WALDEN. All right.

Mr. Lesniak?

Mr. LESNIAK. We do have some questions about a potential pilot program. We are in favor of bringing in technology that makes pipelines safer. But if we are going to put stuff in the ground, we want to make sure that it's safe before it gets put in the ground.

Mr. WALDEN. Yes. Sure.

Mr. Osman?

Mr. OSMAN. Absolutely. You know, we agree with PHMSA's proposal for the pilot program. I think we need Congress' help to fill in a gap in the process right now to test those technologies that look like they're ready, but we don't know for sure——

Mr. WALDEN. Right.

Mr. OSMAN [continuing]. Until we can implement them in the real world. So we are very supportive of that particular——

Mr. WALDEN. For everybody's benefit.

I also believe we should consider the voluntary program to promote sharing of information and lessons learned across the industry, and I know some of you have referenced that.

Do you all agree that that's a good way to go here on lessons learned, a voluntary program?

Ms. SAMES. AGA definitely does. We do a lot of sharing behind the scenes among operators. We want to be able to share more with the regulators, but we need a safe harbor in order to do that. We see most of it in some of the provisions. It's still lacking in a few areas.

Mr. WALDEN. OK.

Mr. Lesniak?

Mr. LESNIAK. We do think that the VIS program has potential. We want to make sure that it's not a substitute for withholding specific information about specific pipelines and incidents.

Mr. WALDEN. Got it.

Mr. Black?

Mr. BLACK. Months have been spent on this—on it with a group convened by PHMSA of a broad collection of stakeholders. They've come up with a report from that committee on a proposal for Congress on a way to get operators to participate in that. We urge the committee to adopt that.

Mr. WALDEN. All right.

Mr. Osman?

Mr. OSMAN. I will just disagree with one point that Mr. Black made. That committee has worked for years——

Mr. BLACK. Yes.

Mr. WALDEN. Oh, not once. Got it.

Mr. OSMAN [continuing]. To recommendations for how to do this the right way. So——

Mr. WALDEN. Yes. So you think we ought to get on with it? Is that what you're saying?

Mr. OSMAN. Yes. Both the need—we need the work from Congress. We need the protections in the statute to make that.

Mr. WALDEN. Got it. All right.

Let me ask you about cybersecurity. There are, obviously, threats to the pipeline system as there are to the electric grid, as there are to you name it. There are hackers out there.

What tools do you need from us when it comes to cybersecurity that are lacking in this bill that you can talk about here?

Ms. SAMES. Do you want to go first?

Mr. BLACK. We take cybersecurity very seriously. I think Congress has acted on this in the FAA reauthorization last year to elevate the role of cyber within TSA, bring more resources there.

We encourage Congress to appropriate more funds for TSA to do its work on cyber. Attention on this issue from government agencies and Congress can only help.

Mr. WALDEN. Yes. I am not—I am not—I don't know about the ranking member, Mr. Upton, but TSA has been less than cooperative with this committee as we delve into these issues and, you know, I am not overly impressed.

So I don't know that they're going to get more money. Mr. Upton, I don't know if you want to weigh in here.

Mr. UPTON. They're going to be checking you at the Pre-Check.

Mr. WALDEN. I know. I know. I know.

Mr. UPTON. I've been randomly selected, like, the last 5 weeks in a row.

Mr. WALDEN. Yes, that's right. That's right.

[Laughter.]

Mr. UPTON. Just have a smile on your face.

Mr. WALDEN. That's right. My time has expired on that note and—yes. Thank you all for what you're doing. We want to get this right.

Thank you, Mr. Chairman, for the hearing.

Mr. RUSH. The Chair now recognizes Mr. McNerney for 5 minutes.

Mr. MCNERNEY. From the great State of California. You forgot.

[Laughter.]

Mr. RUSH. From the great State of southern California?

Mr. MCNERNEY. Northern Cal. Oh my gosh.

Mr. RUSH. Northern California.

Mr. MCNERNEY. Thank you, Mr. Chairman.

Mr. Lesniak, you referenced the 2010 San Bruno explosion that killed eight people. It took over an hour for crews to shut off the gas line after that explosion. You pointed out that 19 years ago Congress first started debating automatic spill detection and shut off valves, both which would have assisted in that process.

Can you speak to the importance of leak and rupture detection and the automatic or remote control shut off valves?

Mr. LESNIAK. Yes. Thank you for that question.

I think it's critical. Most new pipelines have both automatic and remote controlled valves in them. We ought to be retrofitting all pipelines with those.

There may be very specific unique instances where it's not appropriate. But I think that those are very rare and that I think this ought to be standard of practice.

It's commonly used in the industry. It ought to be—it ought to be included in the statute.

Mr. MCNERNEY. Well, the ranking member mentioned his concern about automatic shut off valves and so did one of the witnesses in liquid pipelines. Is that an issue?

Mr. LESNIAK. If a valve is improperly closed, it can cause problems, can cause a release on a pipeline. Absolutely.

But automatic valves are used routinely in the industry. So they've, apparently, addressed that problem.

Mr. MCNERNEY. Thank you.

Mr. Osman, a major component of the bills that we discussed was the technology. What additional technologies do you view as being essential to modernizing pipeline safety?

Mr. OSMAN. Thank you for the question.

We have tremendous amount of opportunities today that we didn't have even 5, 10, 15 years ago to enhance the safety of our pipeline system with today's technologies.

In particular, the ones you will hear us talking about the most is the new internal inspection devices and new methods of ana-

lyzing the data that those devices produce. These are tools that are based on the same technology as an ultrasound machine or an MRI at the doctor's office and they can detect problems inside the pipeline years before that problem actually results in the pipeline.

Mr. MCNERNEY. That's amazing.

Mr. OSMAN. It is amazing.

Mr. MCNERNEY. What's one of the barriers to adopting that?

Mr. OSMAN. First, PHMSA needs to complete the pending rulemaking that they've been working on in which everyone at this table is supportive of.

But going forward, beyond that, as we've talked about, we need opportunities to pilot these technologies moving forward so it does not take so many years to update the regulation, and one of the—one of the barriers to updating those regulations is not having that field-tested data and that pilot program that PHMSA proposed would help us go a long way.

Mr. MCNERNEY. But we heard a lot about complaining about how PHMSA is so slow in their rule making. What, besides additional resources, would help in that process?

Briefly, for all the panellist, starting with Ms. Sames.

Ms. SAMES. I would love to see a process that is done with in DOT to move things faster. What I am seeing is that the technical folks within PHMSA do a really good job with moving things quickly once the advisory committees have finished their deliberations.

But there seems to be a delay from PHMSA to the Office of Management and Budget. I don't know where the delay is occurring. But, to me, that's an area that could be investigated.

Mr. MCNERNEY. Thank you.

Mr. LESNIAK. Yes, I would agree. PHMSA is doing their work. Often it seems to be—get caught in the secretary's office or in OMB and, as we mentioned earlier, we think this duplicative cost-benefit analysis that's required in the current statute also slows things down.

Mr. MCNERNEY. Thank you.

Mr. Black?

Mr. BLACK. I think a legislative analogy, rifle shot bills are often easier to move than Christmas tree bills or omnibus. We believe that PHMSA made strategic mistakes on gas and liquid regulations in the last Congress to lump a bunch of many complex diverse issues into large mega rules that just overwhelm the development process and the review process, and that's the primary reason that we are waiting for them today.

Mr. MCNERNEY. OK. Thank you.

Mr. Osman?

Mr. OSMAN. PHMSA has two advisory committees with 30 people on them total, have a tremendous diversity of background and extent of experience in the pipeline industry, in the public space, in the regulator space.

PHMSA should use those advisory committees earlier on to take input into development of rulemakings to make the rulemakings stronger from the get-got. So less of that work needs to be done at the back end when the advisory committees see the rulemaking proposal.

Mr. MCNERNEY. Thank you.

Mr. Lesniak, you indicated that there are 435 miles of unregulated pipeline. What are the barriers to regulating those pipelines?

Mr. LESNIAK. Thank you. It's 435,000 miles of pipelines.

Mr. MCNERNEY. What did I say?

Mr. LESNIAK. The barriers is that it's not provided for in statute at all.

Mr. MCNERNEY. Right. All right.

Mr. Chairman, I will yield back. Thank you for your responses.

Mr. RUSH. The Chair now recognizes Mr. Latta for 5 minutes.

Mr. LATTA. Well, thanks very much, Mr. Chairman, and thank you very much for holding today's hearing and I would also like to begin by just echoing the ranking member of the full committee and also the subcommittee's disappointment the majority took a partisan approach to a historically bipartisan topic by drafting this legislation for us in a vacuum.

My hope is that because it is a discussion draft that the majority intends to work with us to move a bipartisan package forward that I am very interested in working with my colleagues, especially on using the best practices in technology to find the solutions leading to increased safety.

Mr. Black, if I could begin with you. In your written testimony you proposed a pilot program for a new pipeline safety technologies and best practices.

PHMSA also submitted a proposal for a pipeline safety pilot program to give them some regulatory flexibility to allow new technology and safety methods.

What's the problem you're trying to solve with this pilot program and is this a situation where the regulations haven't kept pace with the innovation out there?

Mr. BLACK. The integrity management regulations for liquid pipelines are about 20 years old now and they have not kept pace. They have gaps, including cracking in pipelines. PHMSA has been slow, despite their efforts.

A pilot program that motor carrier has that the administration has now proposed would let PHMSA test on operators of their choosing methods, approaches, technologies that they believe would have an equivalent level of safety and gather data.

We believe that data, when they gather it on operators they choose, would help inform their regulations and speed up their rule making process so then they could apply those lessons to all in industry.

We are supportive of the proposal. We think there should be a few more provisions requiring reporting to Congress about the lessons from pilot programs and a trigger that requires them to then take those lessons that are positive and incorporate them in regulations.

Mr. LATTA. Let me follow up, because you said that you're looking at something that's 20 years old, and two things. One, why is it taking PHMSA this long to catch up with something that's over 20 years?

And at the same time, would you describe some of the cost cut—or the cutting-edge technologies and best practices that your member companies would like to implement?

Mr. BLACK. Well, the technology is growing leaps and bounds in terms of pipeline inspection. Not just the tools that can run through a pipeline but then also the analytics that can happen once the inline inspection device we call a smart pig comes out of the pike.

So we are learning more. The regulations are old. There's a floor. Pipeline operators are going well above them because of your best practices that we incorporate and we suggest PHMSA often incorporate in the regulation.

They can update these. I spoke a moment ago about my personal thought and our organization's thought about the delay by PHMSA. It's taking too many issues and putting them in the large rule making processes that are just slowing down.

It shouldn't be 20 years. Hopefully, it won't be 20 years again.

Mr. LATTA. Well, let me ask, does the draft legislation that's before us include anything like this encourage the operators to adopt these new technologies on a voluntary basis?

Mr. BLACK. In the administration draft, yes. In the discussion draft from the subcommittee, no.

Mr. LATTA. OK. Thank you very much.

To Ms. Sames and Mr. Osman and Mr. Black, if I could kind of ask some quick questions here.

As you know, the States are overseeing more than 80 percent of the Nation's pipeline infrastructure, especially the gas distribution pipelines that connect our homes and businesses to the main transmission system.

Could you talk a little bit about the State programs and the relationship your member companies have with the States and the local pipeline safety regulators?

Ms. Sames?

Ms. SAMES. Yes. So if you—at the State level, especially if you're a larger operator, you're probably having multiple State inspectors in your office every day. They're in the field.

They're with the operator. They're looking at various things, which is why the State program is so important and why AGA has always been supportive of additional funding for the States.

They're the ones regulating and if—they need the proper training, the proper resources to do that. Unlike the PHMSA regulations, the PHMSA regulators, the auditors—I think the interstates and the liquid industry see them a little less often than they do than we see the State operators at the State level.

PHMSA has a responsibility to provide oversights of the States, the State inspectors. They're relying on the State regulators to go out and do their job, which also gets back to why PHMSA needs additional resources.

Mr. LATTA. OK. And I know, Mr. Chairman, my time is expiring, but I will submit my questions in writing to the witnesses.

Thank you very much. I yield back.

Mr. RUSH. The Chair now recognizes the chairman of the full committee, Mr. Pallone, for 5 minutes.

Mr. PALLONE. Thank you, Chairman Rush.

In his testimony, Mr. Black of the oil pipeline industry states that, and I quote, "Applying an ambiguous legal standard of recklessness will not advance pipeline safety."

Mr. Black would also have you believe, in my opinion, that requiring a prosecutor to prove that someone is both knowing and willful is standard whereas in reality most statutes require proof that someone is either knowing or willful so rather than and/or.

So I wanted to ask Mr. Lesniak, is reckless and ambiguous legal standard or is there a precedent in statute for holding someone accountable for reckless behavior?

Mr. LESNIAK. Thank you. It's far from ambiguous or unusual. It's commonly used in other Federal statute, and in fact in most States it's included in the motor vehicle code and other criminal statutes.

Mr. PALLONE. And then doesn't the current hazardous material safety statute contain criminal penalties of someone who willfully or recklessly violates a requirement of the Federal Hazardous Material Transportation law?

Mr. LESNIAK. Yes. In fact it does.

Mr. PALLONE. So I think this is neither novel nor ambiguous and, in my view, it will certainly improve accountability and safety.

Mr. Lesniak, let me ask you another question. What do you think has been the hold up on the mandates from the 2011 and 2016 acts? Do you think that this is due to the duplicative and prescript or cost-benefit required in current law?

Mr. LESNIAK. Yes, it does. Yes, I think it is a big part of it. It's not the only reason but it is one of the key reasons and we need to get that addressed.

Mr. PALLONE. I mean, I think the statutory cost-benefit analysis, clearly, ties the secretary's hands. So my question is would eliminating it help prevent the extreme delays we have seen from occurring again?

Mr. LESNIAK. Yes, we think it would.

Mr. PALLONE. All right. Thank you.

Let me go to Mr. Lesniak again about this mandamus issue. In the aftermath of the San Bruno incident, the city of San Francisco was blocked, quote, "from forcing PHMSA to uphold its statutory responsibilities" and this happened because the court held that the law did not allow for mandamus type citizen suits to be brought against the Federal Government.

So, Mr. Lesniak, do we need the ability for citizens, States, and local governments to be able to compel PHMSA to do its job?

Mr. LESNIAK. I think there's no question. You know, if you think the delays that we are seeing, the Congress gets frustrated with these delays, with implementing the regulations, how do you think a community like San Francisco, San Bruno, Edison, Bellingham feel when they have incidents and or they have pipelines in their communities that they have concerns about and they can't get PHMSA to act?

Congress can hold these agencies accountable but it may take years, if at all, and the public needs to have the ability to go to court to get these agencies to implement these regulations. Congress is a representative of the people. The people ought to have the ability to enforce the laws Congress passes.

Mr. PALLONE. Thank you.

I wanted to ask you, you know, the industry—from their testimony the Interstate Natural Gas Associations seems, in my opinion—I mean, I am putting words in their mouth but from what I

can see from their testimony is perfectly fine—they're perfectly fine with the status quo of rule makings that take a decade or more.

They seem to suggest we don't need to use modern technology like automatic or remote valves or smart pigs and that we shouldn't review the integrity of pipelines that are half a century old or older.

According to the testimony, a rule making process that never ends seems to be fine and anything Congress might do to ensure faster results or improve pipeline safety and hold operators more accountable, and I quote, would overrule years of work in developing new pipeline safety regulations for gas transmission pipelines.

But, of course, what good—I mean, in my opinion, what good does it do the public to have a rulemaking process that goes on and on and never produces a rule? I mean, that's my problem.

So let me ask you, do you think that the industry's opposition to new safety requirements is contributing to the growing opposition of landowners to having a pipeline run through their States, towns, and back yards? Because this is what I hear all the time.

Is that—is this opposition to these new safety requirements contributing to that?

Mr. LESNIAK. I think it is. I think that the industry does throw comments and engage in the rulemaking process sometimes in a way that's counterproductive and slows down the process, and for some in the industry I think it works in their favor—that they would prefer to preserve the status quo.

Mr. PALLONE. But then at the same time you have this growing opposition from the landowners, and I think, you know, this only contributes to that. So I don't know that it's in their interest, but whatever.

Thank you. Thanks so much.

Mr. RUSH. The Chair now recognizes the gentleman from Texas, Mr. Olson.

Mr. OLSON. I thank the Chair, and welcome to our four expert witnesses.

My first question is a simple yes or no. Are pipelines safer than trucks, trains, ships for transporting liquid and gas products?

Ms. Sames, yes or no?

Ms. SAMES. Yes, based on DOT's statistics.

Mr. OLSON. Mr. Lesniak, yes or no? Pipelines safer?

Mr. LESNIAK. Yes, but it's an apples and oranges comparison.

Mr. OLSON. Mr. Black?

Mr. BLACK. Yes.

Mr. OSMAN. Yes.

Mr. BLACK. Mr. Osman agrees. So we all agree that pipelines are as close as we get to perfection transporting products—liquid products—right now with what we have in our world.

Another simple yes or no question for all of you. As Mr. Doyle mentioned, we have a bill that allows FERC to exceed the Federal pay limits for the expert employees that are getting taken by the private sector basically because they don't have the money to pay them.

Would you all support—your organizations—something like that for PHMSA? Because we've heard over and over manpower is a

problem. How about allowing PHMSA to pay more than the Federal minimum?

Ms. Sames?

Ms. SAMES. Yes. Yes.

Mr. LESNIAK. Yes.

Mr. BLACK. We support the Federal Government for PHMSA inspectors being able to pay more to attract and retain inspectors.

Mr. OLSON. Mr. Osman?

Mr. OSMAN. Yes.

Mr. OLSON. There we go. OK.

Let's talk about PHMSA. Right now, they're in the middle of a careful effort to set new rules for gathering lines. Moving to the suburbs of Houston, Texas, the energy capital of the world, I know how important these lines are to production of mostly oil and natural gas.

They're important for the safety they provide and also the ability to expand the system, and while gathering lines may look like other pipelines, they're very, very different because they have very low pressures compared to pipelines that transport the product from Texas up there to New England.

And it would seem to me that our draft legislation is abetting PHMSA's work with their efforts for new rules for gathering lines.

And this is for you, Mr. Black, and you, Mr. Osman. Can you talk about how these lines are regulated today and what PHMSA is doing—we think they're going when they update these regulations and what are the costs of Congress stepping in and expanding PHMSA's jurisdiction while they're still trying to get a handle on new rules?

Mr. OSMAN. Thank you for the question.

Of course we agree that it's important that all pipelines are safe. Our members, INGAA, represent the interstate and natural gas transmission pipelines. We don't represent gathering pipelines so I can't get into the specifics there.

I will say from a process perspective PHMSA's advisory committee is meeting next week to try to advance that gathering rule making forward and if recent history is any indication, they're going to be successful in doing so.

Mr. OLSON. Mr. Black?

Mr. BLACK. This new effort has been about gas gathering. Liquids often is already regulated by PHMSA above certain—below certain—above certain diameters and thresholds.

It's been primarily a gas-gathering push.

Mr. OLSON. My final question is for you, Ms. Sames and Mr. Black and Mr. Osman one more time. I've heard over and over today in this hearing and out back home about how long it takes PHMSA to set new rules to—for these pipeline systems and that's why I have concern we are going to actually slow that process down with these new writs of mandamus.

This new law will encourage more lawsuits from special interest groups with no standing and also leave the back door rules settled through sue and settle and going through a back door is never safe as opposed to going through a front door.

So my question for all of you all is do you think this discussion draft's mandamus provision would impact the quality and pace of PHMSA's rule makings? Would it hurt it?

Ms. SAMES. Yes.

Mr. BLACK. Yes. If we think PHMSA is overwhelmed by congressional mandates, think about how they'd be overwhelmed with litigation from groups that can choose what to sue on.

We think court-forced action would usurp the role of Congress and setting priorities would divert them from whatever they think their highest priority is and it would create the risk of sue and settle rulemaking outside of the process where all stakeholders have an opportunity to participate. I think it hurts.

Mr. OLSON. Mr. Osman?

Mr. OSMAN. I agree with my colleagues. We are all frustrated about the pace of rule makings and we are not happy with the status quo. But we do not think the mandamus provision is going to speed things up.

We think we need more focussed decision making from the agency and we need to do what we can to help them get the resources that they need to move these important rule makings forward.

Mr. OLSON. Thank you. I am out of time.

Mr. Lesniak, one compliment for you being from Austin, Texas. The bowl game we had with the Longhorns against the Georgia Bulldogs. Bevo, our Longhorn mascot, tore into that little bulldog. So, thank you. Made Texas proud.

Mr. LESNIAK. Hook 'em.

[Laughter.]

Mr. OLSON. There you go. Hook 'em. Yield back.

Mr. RUSH. The Chair now recognizes Mr. Loebsack for 5 minutes.

Mr. LOEBSACK. Thank you, Chairman Rush, Ranking Member Upton, and thank you to the witnesses for being here today as well. I am pleased that the committee is holding this hearing on this incredibly important issue—pipeline safety in America.

And before I go any further I should mention too that I think that what we are talking about today while we are talking a lot of about regulation and all the rest, I think it also points up how important a new infrastructure bill would be because we have such an aging system of pipelines out there.

We are going to have to make replacements. We are going to have to make repairs. We are going to have to do all these things to make sure that we can continue to transport the energy that gets transported.

That's got to be a part of a larger infrastructure bill, I believe, and I think that's actually something maybe we can all agree on on a bipartisan basis here as well.

I don't want to make too many assumptions, however, about the nature of politics in this body at the moment. But I do think we can agree on that.

Our Nation's pipeline system does help deliver reliable and low-cost energy to consumers across the country. Ensuring that our pipelines operate safely, reliably, and efficiently is absolutely critical. I think that's a no-brainer.

We must also ensure that we are taking proactive measures to protect our pipelines from both physical and cyber threats—that's

been mentioned, cyber threats—that would put our Nation's energy supply at great risk—those threats out there.

We know that cyber attacks are a near constant and increasingly dangerous threat to our energy infrastructure as well as to the surrounding communities. Federal pipeline safety regulations must keep pace with the capabilities of those who seek to attack our energy supply and undermine our national security, and to that end I am happy I've been working with Ranking Member Upton on the piece of legislation that would improve the coordination and information sharing among the Federal entities tasked with overseeing the cybersecurity of our Nation's pipeline system, the Pipeline and LNG Facilities Cybersecurity Preparedness Act.

I look forward to continuing to work on this important issue as this committee moves forward on comprehensive pipeline safety legislation.

Concerning the legislation that's before us today, the Safer Pipelines Act does include a provision that I think is critically important in ensuring our communities are better protected from the potential impacts of a pipeline incident.

This provision would require that the owners or operators of a gas or hazardous liquid pipeline engage and share information, and it's been mentioned with local emergency planning committees and other local first responders.

This will ensure that those individuals who are first to the scene in the event of an accident are able to respond as effectively as possible to protect the surrounding community.

Those first responders, we all know, are absolutely critical. We've had a lot of floods in Iowa over the past 10 years since I've been in office—10 or 12 years. This kind of an incident would be absolutely—it would be absolutely essential for those first responders to have as much information as possible as well.

And I know we talked about this already a little bit, Mr. Lesniak. In your testimony you highlighted this effort to engage with the emergency planning committees and first responders and improve communication and education efforts within the communities.

Can you elaborate again, if you would, on how you think information sharing with State and local emergency responders can help ensure the safety of our communities and improve outcomes in the event of an incident?

Just elaborate on what you have already been talking about earlier, if you would.

Mr. LESNIAK. Thank you.

You know, local emergency responders have a hard time getting information about pipelines and, as I said, it's a voluntary process. Some operators are really good about it. Some operators are not very good about it.

But it's the local emergency responders that have to be able to act quickly to protect their communities.

And so anything that Congress can do to make sure that critical information is shared with local LEPCs, local fire departments, and other first responders I think is critical.

Mr. LOEBSACK. So in terms of what these local communities can do themselves to take steps to protect themselves from the impacts of an incident, do you have any specific ideas about that?

Mr. LESNIAK. I do. I worked with—personally worked with a local pipeline operator to develop an emergency spill response plan for Austin, Texas to protect Barton Springs, one of our critical natural resources there, and they worked well with us and that process worked really well.

Other communities could do that. Other pipeline operators that we reached out to in our community weren't interested in working with us.

And I just might say—you know, I am near the end here—I do worry about not just cybersecurity attacks but I worry about physical attacks and I go on the mapping website that you mentioned earlier. There's a lot of information that the public does need.

But that information is available to the bad guys, too, and we have to be thinking about how to balance, you know, those kinds of interests that we have as a public but also making sure that we secure these pipelines from the bad guys who want to do terrible damage to us and can inflict terroristic kinds of actions on us and we have to be careful on that front.

So thank you very much. I appreciate the time, and I yield back. Thank you.

Mr. RUSH. Mr. Griffith is recognized for 5 minutes.

Mr. GRIFFITH. Thank you very much, Mr. Chairman.

Picking up on that, talking about bad guys physically attacking the pipeline, that's a concern of mine too and I visited with some folks, and I know there's other folks doing this too, but Corning has a product where they can actually put a fiber down on the pipeline as it's being laid and you can see if somebody walks up to it, drives up to the pipeline, starts digging—I mean, any of those things that would tip you off that one of the bad guys might be out there.

Also has the advantage of because the temperature being colder with the gas in the pipeline than the soil around it that if there is a leak it picks up that temperature changing and identify a leak fairly quickly.

So along those lines, I know that that's out there and I know there's probably some other technologies as well that are emerging.

I am just wondering what you all think the Federal Government might be able to do to encourage more new technologies like this and then, of course, I know it's not your bailiwick. But then we got to convince FERC that it probably ought to be there.

Yes, ma'am?

Ms. SAMES. And I apologize. I am a little passionate about technology. I helped revamp the PHMSA R&D program. I then went from there to a research consortium.

So, for me, it's additional funding for technology. We have it within PHMSA. We have a little bit within Department of Energy. But more technology funding to get us the products that we need. The industry is contributing a good bit also.

We've already mentioned piloting these technologies so we can get them into the market faster. All of that will help move things forward.

Mr. GRIFFITH. And talking about the proposed—I know the administration has proposed a technology pilot program. You know, how do you think that would work? Obviously, you're favorable, but

how do you think their program would work in moving some of this technology forward?

Ms. SAMES. I would hope that it moves things faster—that if they have an official program that Congress has approved that it allows them to move faster, because right now they're doing it but it's at a pretty slow pace.

Mr. GRIFFITH. And I certainly would support putting more funding towards the research. I am big on research and I think it's important, and I do think the question that Mr. Pallone asked earlier of Mr. Lesniak was that is some of the concerns about pipelines causing some of the resistance to new pipelines.

I think the answer to that is, clearly, yes. There's a pipeline going through my district, and some folks are going to be against it no matter what and there are other reasons to be against it.

But some folks are just worried because of some of the safety issues that they've heard about, and the more we can do to reassure them I think the better of we are.

Mr. Black, do you want to make a quick comment on this?

Mr. BLACK. Yes. The technology you described is interesting and I think it needs to be reviewed regularly by the advisory committee groups.

Mr. Lesniak is on one of them. Pipeline operators are. Congress told PHMSA that it needs to put its regulations and its cost-benefit and risk assessments before the advisory committees.

I think Congress could also tell them to review research and development. Have PHMSA put forward its proposals and hear from other organizations that collaboration right now occurs but it's not frequent enough. If you all put that in the statute that should increase it.

Mr. GRIFFITH. All right. I appreciate that.

Now, I am going to go to an area that hasn't been touched on yet and just ask if anybody has any ideas. I met with, I don't know, a few months back some folks at Virginia Tech, and they are doing research related to water and sewer pipes.

And one of the things that they found was is that the age of the pipe was not dispositive nor the material—that one of the things that was interesting was the type of soil and what environment the pipe was in.

So I noticed in the bill there are several mentions of the age of the pipe and what material it is and the cast iron pipes. But at least for water and sewer, they talked about if it was in the right type of soil cast iron might last 100 years.

In a different type of soil it may not make it to 50 years, and you want to make sure you know what kind of soil you're in and whether or not, interestingly enough, apparently degradation in and around railroads was higher, and I thought that was fascinating.

Is there any research going on in this regard with gas pipelines as well to make sure that we're—I mean, we can go out there and say you check them every 50 years and that's great.

But if you have got a pipe that's in a soil type or in an environment where it would last a hundred why would we spend money on that and let's focus on the areas where it's most important.

Ms. SAMES. Yes. I mean, on the gas distribution side, we are doing a lot on replacement and so you're looking at a number of factors and the environment is one of those factors. So and the pipe tells you a good bit.

So if you're going out doing leak surveys which we are required to do and checking very particular areas and doing more, especially for cast iron and bare steel, when temperatures change and that frost level in certain areas of the country—I know that down south you don't have it but we do up north—that frost level changes, the soil moves.

So that causes extra strain on the pipe. It's all things that have to be taken into account and it's—we've done a lot of research in this area.

Mr. GRIFFITH. Well, and I would hope that any bill that we would pass would take into account some of the new technology and take into account the fact that not every pipe is the same as the pipe in the same—in a different soil type or different area.

Thank you very much. I yield back.

Mr. RUSH. The Chair now recognizes Mr. Kennedy for 5 minutes.

Mr. KENNEDY. I thank the chairman for having this important hearing to address pipeline safety and thank you to our witnesses for being here.

We all recall the devastating events that happened last year when a distribution line exploded on September 13th, wreaking havoc in three communities in the Merrimack Valley of Massachusetts.

Local residents and first responders were gravely injured, homes destroyed, families displaced for months on end. And a young man named Leonel Rondon lost his life.

Ten months later, these communities are still recovering from the devastation. I am grateful to my colleague, Representative Lori Trahan, for introducing H.R. 2139, the Leonel Rondon Pipeline Safety Act to address the issues leading to this tragic event. I am proud to be a cosponsor of this legislation. I would also like to thank Senator Markey for introducing the Senate version.

Now, Mr. Lesniak, in your testimony you speak to the importance of pipeline companies developing and implementing a continuous improvement to the safety and management system, or SMS.

You know that the Merrimack Valley tragedy eliminated the fact that voluntary systems of SMS weren't Incentivizing all companies.

So, sir, I appreciate the idea of an annual fine on the PHMSA as a level of accountability without making SMS mandatory. Those who fully embrace SMS should have no problem. But do you believe that will be enough of an incentive for those that are lagging behind?

Mr. LESNIAK. Thank you.

You know, there ought to be a regulatory floor and for critical safety processes. And so I think those types of safety processes should be required and not voluntary.

Good operators implement them. Bad operators don't.

Mr. KENNEDY. Thank you, sir.

As you are well aware, there's a $2 million cap on PHMSA's penalty authority for civil penalties. Do you believe that the fines cur-

rently assessed provide sufficient deterrent for companies that commit a violation?

Mr. LESNIAK. No, I don't. If you look at it, some of these pipelines—for example, there's a pipeline that's being proposed in the State of Texas right now. It's a $2 billion project. It's going to transport millions of cubic feet of natural gas per day. A million-dollar or $2 million fine is a drop in the bucket for companies like that.

Mr. KENNEDY. And, sir, I've heard said by some skeptics that you, quote, "can't create a culture of safety." But it seems to me that Congress has, in fact, forced change where industry has failed to take adequate safety steps.

Do you have any response to those who think that this is a fool's errand?

Mr. LESNIAK. I think that you can't regulate necessarily a culture of safety. But, again, you can set a floor that makes sure that every company meets minimum safety standards and that—and make it more ubiquitous across the industry.

Mr. KENNEDY. And a final question for you, sir. Across the country and particularly at the State level we are seeing concerning efforts to curb the rights of Americans, including, particularly, Native communities to raise their voices in defense of pipeline safety.

Often those communities stand to be the most impacted by proposed projects such as the Dakota Access projects across drinking water and burial grounds for the Standing Rock Sioux.

The administration's proposal to reauthorize PHMSA goes even further than current law in proposing to criminalize rightful peaceful protests in the name of pipeline safety.

I would imagine we can all agree that an effort to sabotage or physically damage a pipeline is one thing—gun or explosives or, again, some other way to damage the integrity of the actual infrastructure—but a very different exercise to use one's free speech rights to peacefully protest a proposed construction project under construction.

So, Mr. Lesniak, how can we ensure that balance between First Amendment community voices and meaningful dissent are protected in our pipeline safety efforts and how can we better account for Tribal indigenous rights?

Mr. LESNIAK. I think the Pipeline Safety Trust has spoken clearly about if anyone takes action to damage or disrupt the operation of a pipeline that's wrong and it's not safe and it threatens the public safety and threatens the environment, and that ought to be addressed.

However, legitimate dissent and protests by the public should be clearly protected. In the State of Texas, the State legislature recently has criminalized legitimate dissent and it's wrong and that should not happen.

But as long as we are protecting the pipelines and those operations that's what we should do if it creates a public safety threat. Otherwise, Congress should stay out of it.

Mr. KENNEDY. All right. Any additional comments from anybody else?

Mr. Black?

Mr. BLACK. AOPL would like to deter attacks on pipelines that could harm the environment or the public or the assailants themselves.

We are not trying to deter peaceful nonviolent protests.

Mr. KENNEDY. Appreciate that.

I yield back. Thank you.

Mr. RUSH. The Chair recognizes Mr. Kinzinger for 5 minutes.

Mr. KINZINGER. Well, thank you, Mr. Chairman. Again, thank you all for being here today. We appreciate it.

I would like to start with cybersecurity, and some of the questions I am going to ask—I know we've already touched on these topics, but I do have different questions on them.

I don't believe we can separate pipeline safety from pipeline security. Multiple Federal agencies have a role to play when it comes to pipeline cybersecurity.

Given that the DOE is already the lead sector-specific agency for energy and given the fact that they already have tremendous experience and resources dedicated to pipeline cybersecurity, especially through the National Labs, I think we need to address this in the pipeline safety bill.

So for Mr. Black, Ms. Sames, and Mr. Osman, each of you have supported H.R. 370, the Pipeline and LNG Facility Cybersecurity Preparedness Act.

Would any of you have any objection to including it in the Pipeline Safety Reauthorization and specifically if you do, why? We'll start with you.

Ms. SAMES. We are supportive of the coordination role, which is in that bill. So I think there is—I would have to see—I am an engineer.

Mr. KINZINGER. I understand.

Ms. SAMES. That means I need the details.

Mr. KINZINGER. Yes.

Ms. SAMES. But, in theory, yes, we could probably support.

Mr. KINZINGER. I am a politician. We need details, too, before we commit to anything.

[Laughter.]

Mr. KINZINGER. Because it always come back to get us.

Mr. BLACK. The public-private collaboration in cybersecurity has been good and, as you say, multiple agencies should have roles.

We were proud to support the bill through the committee process. We encourage on cyber a holistic approach so that you don't have duplication of government agencies, conflicting guidance to all of us.

So we think that means involving intelligence committees, transportation committees. I would discourage you from linking the two on legislation. We want reauthorization legislation to pass.

I think if you do both of them together, it slows reauthorization. That's your prerogative.

But if you're trying to achieve both, I would recommend you do them separately.

Mr. KINZINGER. OK.

Ms. SAMES. And I agree with Mr. Black on that.

Mr. KINZINGER. All right.

Mr. OSMAN. I agree with my colleagues. You know, we advocate for a comprehensive, governmentwide approach to pipeline cybersecurity, collaboration and coordination between the different agencies that have different important roles.

I am sure Mr. Black's concerned that, you know, bringing it into the reauthorization bill could slow down a timely reauthorization. But other than that, it's certainly your prerogative.

Mr. KINZINGER. Understood.

In December of 2012—in the December 2018 report GAO significantly raised concerns about TSA's pipeline security program. I am concerned that the TSA is not prioritizing pipeline security as they should.

For example, it's already been mentioned that they have over 50,000 employees but only six were assigned to pipeline security as of last year.

Mr. Osman, are you concerned about TSA staffing issues and have you made any recommendations to improve that situation?

Mr. OSMAN. Thank you for the question. Oh, I am on.

Thank you for the question. Certainly it's important that TSA is the lead safety regulator, has the resources that they need.

Our association, INGAA, along with the other associations represented at the table, have made appropriations recommendations do increase the funding that TSA has to increase the resources that they can bring to the table.

We have seen over the last year, certainly due to the pressure from this committee and others, a concerted effort at TSA to adopt the recommendations that the GAO gave them to improve their performance.

They've rolled out a new pipeline cybersecurity assessment initiative, which we are participating in actively and it's helped a lot.

Mr. KINZINGER. OK. Great.

And are you concerned—well, I will say this. TSA conducts interviews with operators, known as the corporate security reviews. But TSA doesn't track the information or use it to measure risk.

Are you concerned about the way these corporate security reviews are being conducted or and do you have any recommendations on that level either?

Mr. OSMAN. As I mentioned, that program has evolved to this newer pipeline cybersecurity initiative. We know that they're implementing their recommendations to the GAO, which included some of the tracking and data collection that you're talking about. So we'll need to keep watching that and see how it——

Mr. KINZINGER. But you feel like we are on a comfortable track with that? A good start at it?

Mr. OSMAN. Yes. A good start.

Mr. KINZINGER. OK.

Mr. OSMAN. That's the way we'd put it.

Mr. KINZINGER. Hopefully, a good ending, too.

Mr. Black, are attacks on pipelines an ongoing problem and how are the attacks on pipeline facilities a threat to safety and public—of the public and the environment?

I am sure you have answered this in numerous ways but——

Mr. BLACK. In 2016, there was a coordinated series of attacks where people broke chains, opened perimeter fencing, and tried to

turn valves on pipelines, covering about 15 percent of our daily crude oil use.

Thankfully, they did not result in a rupture but they could have by improperly forcing closed a valve. 2017 there was an attack. 2019 there was an attack.

There was an attack on a pipeline just before it started in operation. If it had started operation without that damage being addressed, it would have caused a problem. We believe there are loopholes in Federal law on operating—on construction and on actions that don't damage or destroy but that could that need to be closed by Congress so that we deter these attacks.

Mr. KINZINGER. Thank you, and as a guy that lives on top of a bunch of pipelines and near them, they're really important. But this is a very important issue as well. So I thank you and I yield back.

Mr. RUSH. The Chair now recognizes Mr. Veasey for 5 minutes.

Mr. VEASEY. Thank you, Mr. Chairman, for holding this hearing to talk about pipeline safety. I think that all of us can agree that we do not want to lose another life and that we do not want to incur any further damage because these pipeline explosions can be absolutely devastating, including death.

And I would also like to thank Chairman Pallone and Congresswoman Lori Trahan for their efforts to prevent deadly pipeline explosions like the one that happened in the district that I represent in Dallas, where we lost 12-year-old Linda "Michellita" Rogers last year in the city of Dallas. We have to do everything that we can to, obviously, prevent us having another incident like that. I don't know if that's something that all of you sitting at the table would agree with.

One powerful tool we have as lawmakers is the imposition of civil penalties to make sure that people are doing everything they can to prevent another incident like what happened in Massachusetts, like what happened in Dallas, from ever occurring again, to make sure that people aren't putting profits ahead of people. I think that everyone would also agree that you don't want to put profits ahead of people.

In the State legislature in Texas this year, my former colleague, State Representative Rafael Anchia from Dallas, he was able to get a pipeline safety bill passed but as a companion piece on the Federal end.

Representative Trahan's Pipeline Safety Act bill would increase penalties for companies that violate the law up to $200 million for the most egregious violations.

And I wanted to ask Mr. Lesniak while the civil penalties alone cannot prevent tragedies like the ones I just mentioned from happening again, in your opinion how would the increases in penalties included in the Congresswoman Trahan's bill impact the decisions that are made by these pipeline operators?

Mr. LESNIAK. I think anytime that we make substantive substantial penalties for bad actors it's a good thing. They will be more likely to take it account.

You know, I work with pipeline operators all the time in my role on the technical advisory committee and working with the Pipeline

Safety Trust in PHMSA and those companies that engage in those processes on a regular basis those are generally the good operators.

We write regulations and create penalties for the bad actors and you need to make it so that they think twice before they don't do things that they know they ought to be doing.

Mr. VEASEY. Pipeline industry associations develop operating best practices based on the recommendation of their engineers and experts. Where appropriate where do you think PHMSA can take advantage of these best practices that improve pipeline safety?

Anyone can answer that.

Mr. OSMAN. Thank you for the question. What's important is that PHMSA continues to embrace the latest technologies and engineering practices that those—that those consensus technical standards represent.

In PHMSA's bill, they draft legislation. They have proposed some language along those lines to require the agency to continue to be focused on ensuring the latest engineering technical standards and incorporated into its regulations, and that's important because we have a lot of standards in there right now that are many decades old, for example, the fundamental gas transmission pipeline standards, ASME—American Society of Mechanical Engineers—B31.8S.

The version that's incorporated in the regulations today was written in 2004. There's been five versions published since then, each one better than the last.

So, you know, this is an opportunity to by simply changing some references, doing a quick review of the new documents to demonstrably improve pipeline safety with relatively little effort.

Mr. VEASEY. I know that on the first—at a pipeline safety oversight hearing that there was concern about rule making taking too long to complete. What do you think that we can do to help speed that up and help make that situation better?

Mr. OSMAN. Thank you for the question. Now, part of it, as my colleague, Mr. Black, mentioned earlier, is doing what you all are doing to encourage PHMSA about what the priorities really are to get those mandates done.

We do think that PHMSA made a mistake in years past by trying to lump just too many different unrelated initiatives together and that slowed down every step in the process from A to Z.

I think also opportunities to look at resource levels in PHMSA with provisions like the subcommittee's draft direct hire proposal could go a long way to help as well.

Mr. BLACK. With your interest in best practices of mechanical engineers and other technical experts, you have got an opportunity. We've discussed here about best practices that have been updated.

But those updates have not been incorporated in the Federal regulations. Those updates require all operators to comply. So you have got the opportunity and the administration's recommendation to require PHMSA to regularly review updates and to decide to incorporate.

That's Congress setting a priority for PHMSA of harnessing new technology. Just as Mr. Osman said for natural gas, the same is true on liquids.

We've got a recommended practice 1160 on integrity management inspection and maintenance. Let's get those updates rolled into regulations.

Mr. VEASEY. Thank you, Mr. Chair. Yield back the balance.

Mr. RUSH. The Chair now recognizes Mr. Johnson for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman, and thanks for conducting this hearing today. Really important topic, and I hope that as we move forward our Energy and Commerce majority will seek to make this historically bipartisan process just that—bipartisan.

We should not be playing politics with pipeline safety but instead, we should be working on a bill that has received proper and necessary technical feedback from PHMSA and all members of this committee.

We all want to produce a bill that can help address the current challenges and opportunities of our pipeline system. We all want a bill that promotes safety, allows for technological innovation and correctly addresses emerging physical and cyber threats.

That's the bill we should all be working on and I hope we can eventually work together on those issues.

Ms. Sames, we obviously need to do everything we can to minimize events within our pipeline infrastructure. I think everyone shares that goal.

Everyone would also agree that it is incumbent on this committee and industry to ensure that we are doing everything we can to correctly respond to those incidents when they, unfortunately, occur.

So when pipeline incidents do occur, how do gas utilities communicate with first responders and how can we here in Congress help improve that communication?

Ms. SAMES. Because our companies—the distribution companies are in the communities that they serve it's a much closer relationship. We are doing immediate outreach.

We are doing outreach in advance to make sure that the emergency responders in that area know where the pipelines are and what's in those particular lines—the distribution lines.

Because we have so many excavation damages—individuals hitting our lines because they're not either calling before they dig or they're not abiding the lines—we have a lot of opportunities to do emergency response on the distribution side.

So they know us. They know us well. They're coordinating with us. We do incident command structure similar to the fire departments so that when we are on the scene they know that their job is to keep things safe until we get there. Our job is to make sure that the pipeline stays safe.

So it's a nice tag team between the two. On the information that they need, it's that close coordination in advance and good coordination and communication once on site.

Mr. JOHNSON. OK. Can you talk briefly about the importance of allowing operators to make—to successfully perform an initial assessment after an incident? I mean, what arises if someone makes a wrong assessment?

So tell me—tell me what you think about operators doing the initial assessment.

Ms. SAMES. So what could happen if somebody makes a wrong assessment and one of our concerns has always been some emergency responders are very gung ho. They see a fire. They want to make sure that things are taken care of and we try our best to make sure that they're not turning valves because as was heard earlier, you turn the wrong the valve and many bad things can happen.

So on the assessment after an incident, after we get onsite it's what occurred, how did it occur, who was involved. We are trying to gather as much information as possible so that we can make the right decisions.

Mr. JOHNSON. And no one better than the operators are poised to do that assessment. Wouldn't you agree?

Ms. SAMES. We are the technical experts.

Mr. JOHNSON. Yes.

Ms. SAMES. So we should know our lines. We should be familiar with our lines. We should know everything about them.

Mr. JOHNSON. OK. All right.

Mr. Black, a bipartisan concern expressed at the May 1st pipeline safety oversight hearing was PHMSA taking too long to complete their mandated rulemakings.

What can we do to help that situation?

Mr. BLACK. First, to encourage PHMSA to not lump too many complex issues into large rulemakings that overwhelm the process.

Second, help them gain information. We've got a recommendation from AOPL that the administration made to follow something with some of the motor carrier statute that allows a pilot program. PHMSA, at its discretion, can choose certain operators to test new technologies and approaches that I believe should have an equivalent level of safety. Then they can gather information from that.

Mr. JOHNSON. Some have expressed concerns that the requirement for PHMSA to do a cost-benefit analysis of their rule is partially to blame. Do you—do you see that?

Mr. BLACK. No, sir. Not at all. It's going to be required ultimately because of executive order. It should be done early. It should be done and vetted with a stakeholder group as it is today with the advisory committees.

Mr. JOHNSON. OK. Thank you. I yield back.

Mr. RUSH. The Chair now recognizes the gentleman from Arizona, Mr. O'Halleran, for 5 minutes.

Mr. O'HALLERAN. Thank you, Mr. Chairman, Ranking Member Upton, and our witnesses here today to discuss the legislative proposals before us to reauthorize the national pipeline and safety framework.

While I know there are various perspectives being represented on our witnesses' panel today, I would like to echo the chairman's remarks and that this is simply the continuation of our conversation on pipeline safety and this bill will evolve from where it is today.

I look forward to working with my colleagues on both sides of the aisle on a bipartisan framework which truly provides public safety and oversight of our pipeline infrastructure.

Ms. Sames, you mentioned during part of the discussion on pipeline safety—you used the word proper resources. Do we have the proper resources?

Is there the proper funding out there in the field from both the Federal Government, the State government, and others that—in the industry to be able to address the safety issues for our citizens?

Ms. SAMES. I think PHMSA could use some additional funding. I also think that they've done a really good job revamping their training program for both Federal and State regulators.

I think it can—I think additional funding there can also help. I've heard concerns that it can take a little while for the inspectors to get through that training.

So additional resources would help with that training portion. Also, research—you have already heard me say I think they need additional money for research and development so that they can implement pilots, move technology forward, implement pilots, and get the technology out in the field faster than it is currently.

On the State side, the States need more funding. They need the ability to pay their inspectors more. They need the proper training. So I am a fan of both.

Mr. O'HALLERAN. Thank you.

Mr. Lesniak, I think it was you that mentioned bad actors. How do you define bad actors and what is the industry doing within itself to identify who these are and to address those issues?

Mr. LESNIAK. You know, over the last 20 years that I've been involved in pipeline issues, you know, I've dealt with operators that are really good. They're very proactive.

They go well above and beyond the minimum standards in the regulations and I've also dealt with pipeline operators that do the bare minimum and sometimes not even that, and that's how I would define a bad actor is an operators that's just doing the bare minimum or less.

Mr. O'HALLERAN. And what is the industry, to your knowledge, doing to address that and call out those bad actors?

Mr. LESNIAK. You know, I think my colleagues here on the panel, you know, their industry is doing training. They're doing outreach. But, you know, I suspect that they would tell you that you can lead a horse to water but you can't always make them drink.

Mr. O'HALLERAN. Well, I will go down that road another time.

[Laughter.]

Mr. O'HALLERAN. Mr. Osman, I just wanted to point out that you also mentioned the concern with some of the financial issues as it relates to getting regulatory issues taken care of, and I just wanted to identify the overall issues out here.

Mr. Black, in PHMSA's recent legislative proposal to Congress for the reauthorization of the Pipeline Safety Act it includes the authority for PHMSA to evaluate and implement a safety incentives program for operators who voluntarily exceed minimum Federal standards for pipeline safety.

It also proposes a pipeline safety technology program to test the latest technologies in controlled real-world settings.

Do you believe these proposals deserve more consideration as we move beyond today's proposed discussion drafts? Why or why not?

Mr. BLACK. Thank you, Congressman. The second one you mentioned, the pilot program, we particularly encourage. We think it's going to lead to quicker rule makings and better use of technology.

We suggest two additions to what the administration suggested: one, reporting to Congress and the public about the lessons from them; two, a requirement that they roll those positive lessons into future regulations.

The first one that you mentioned is interesting on—in safety incentives. It may be more gas focused. I would be interested to learn more about that. And on your question about resources, the problems that we have heard is PHMSA's difficulty through the Federal hiring process and the salaries that it can pay to hire quality inspectors and then to retain them when they have lucrative options, including in the private sector.

So we recommended Schedule A hiring authority, if that helps. The direct hire authority from the subcommittee's discussion draft, that could be the way to go. We've supported that as well.

We want PHMSA to be able to attract and retain quality inspectors.

Mr. O'HALLERAN. Well, given the time, I have some more questions. I will put those in writing. But I just—my background in law enforcement tells me that you have to have consistency.

You have to have enough personnel to identify the issues and to address them in a timely manner and you have to be proactive about these issues.

And it is apparent, now that all four of you have identified funding as a crucial issue and retention now also, that we need to find a way to address those issues.

And I yield.

Mr. TONKO [presiding]. The gentleman yields back.

The Chair now recognizes Representative Flores for 5 minutes.

Mr. FLORES. Thank you, Chairman, and Leader Upton, I appreciate you all holding today's hearing. I share many of the concerns that have been expressed on this side of the aisle today at the dais regarding the—this discussion draft and the process by which it has come in front of us today.

In particular, I am still waiting on information from the May hearing with PHMSA, and I understand the majority has not submitted our written request yet to the witnesses from that hearing, and those requests included my own so I am hoping that the majority will hurry up and get that to the witnesses.

It seems reasonable to me that before we start working on legislation we'd at least have a complete record from the prior hearing before we move forward in the legislative process.

I would first like to talk about pipeline vandalism. PHMSA has proposed strengthening the existing criminal measures for attacking a pipeline facility. We've also received a letter that Mr. Black spoke of earlier in his opening statements in support of this provision from some of the unions that are involved in the construction operation of pipelines.

And, Mr. Chairman, I would like to ask for unanimous consent that this support letter from these four unions be entered into the record.

Mr. TONKO. Without objection.

[The information appears at the conclusion of the hearing.]

Mr. FLORES. Thank you, Mr. Chairman.

I support this proposal from PHMSA, especially in light of several high profile attacks on pipelines involving so-called valve turners.

These dangerous stunts not only endanger lives; they damage property. They damage the environment and can have significant economic consequences.

To all our witnesses, do you agree that this activity is dangerous?

Ms. Sames?

Ms. SAMES. Yes.

Mr. FLORES. OK. Mr. Lesniak?

Mr. LESNIAK. Yes.

Mr. FLORES. OK. Mr. Black?

Mr. BLACK. Yes.

Mr. FLORES. Mr. Osman?

Mr. OSMAN. Absolutely.

Mr. FLORES. Would each of you support strengthening criminal standards to discourage people from damaging pipeline facilities?

Ms. Sames?

Ms. SAMES. Yes.

Mr. FLORES. Mr. Lesniak?

Mr. LESNIAK. We'd need to look at the proposal.

Mr. FLORES. OK. Mr. Black?

Mr. BLACK. Yes.

Mr. FLORES. Mr. Osman?

Mr. OSMAN. Yes.

Mr. FLORES. OK. Great. Thanks.

Mr. Black, Ms. Sames and Mr. Osman, pipelines are among—we all know this—pipelines are among the safest and most efficient way to deliver natural gas and petroleum products to the consumer.

What are some of the significant trends across the industry to improve pipeline safety? If you can spend about 20 seconds each on what some of the significant trends are to improve safety today?

Ms. SAMES. When I look at the distribution incidents, the ones that cause death and injury, the leading two causes are excavation damage and vehicles hitting above-ground pipelines.

Those are the top two. So there's a lot of effort to promote 811—Call Before You Dig. It's a free service. We need more people calling before they dig.

On individuals hitting our lines with vehicles, we are trying to figure out how do you stop people from going through a field and hitting a pipeline. I am still struggling with that one.

Mr. FLORES. No, I understand.

Mr. Black?

Mr. BLACK. So we are the safest method of transporting fuels but we are not at the goal of zero incidents that we want to be. Those trends are reviewed every year in our strategic plan.

Currently, we are very excited about two things: one, increased technology through in-line inspection devices, and two, improve safety culture through industry wide implementation of safety management systems.

Mr. FLORES. Mr. Osman?

Mr. OSMAN. In the early 2000s, Congress directed PHMSA to implement an integrity management program. Since that time, we've

seen great improvement in the areas that that program was designed to address—threats like corrosion, threats like cracking on pipelines—and PHMSA is very close to completing the rulemaking to expand that to a much wider degree of pipelines and also to implement newer technologies. So we are excited to see that happen.

Mr. FLORES. In the last minute that I have left, Ms. Sames, as you know, 43 States and the District of Columbia have pipeline replacement programs as part of their statutes.

In Texas, we have a risk-based program that requires operators to survey their pipelines for the greatest potential threats for failure and to make replacements.

Our pipeline company is required to develop a prioritized schedule for replacement and in some ways our Texas regulations are more—Texas regulations are more stringent than PHMSA's.

Generally speaking, how are these pipeline replacement programs funded and what are some of the constraints to further accelerate the replacement of aging pipelines?

Ms. SAMES. So each operator is working closely with our State commission on replacement programs. They're proposing here's what we want to replace.

Here's the time line for replacement. It's all risk-based. So that—and try to be done in a way at the least cost to the customers.

On faster, that's a bit of a challenge because you need qualified individuals in order to do the work. You do it too fast, you get—I don't want that. So there's a good balance. There needs to be a balance between how quickly you replace with a qualified workforce so you have your quality.

And going back to your last question, I apologize; none of us mentioned that the other thing that we are doing to advance is sharing of information. We do it through conferences, workshops, technical papers. So something else.

Mr. FLORES. Best practices you're talking about?

Ms. SAMES. That is correct.

Mr. FLORES. OK. Thank you for—all the witnesses for being here today and I yield back the balance of my time.

Mr. TONKO. The gentleman yields back.

The Chair recognizes himself for 5 minutes.

My understanding is that the 2011 Pipeline Safety bill included a number of required rule makings for PHMSA, many of which are not completed 8 years later, and I know that Representative McNerney had asked the panel about the reasons for those delays.

But, Mr. Lesniak, I want to come back to you and ask you to more fully develop, if you would, PHMSA's cost-benefit requirements. Are they a hindrance to getting required rule makings completed in a timely manner and can you give us some more information in that regard?

Mr. LESNIAK. You know, as I said before, the Pipeline Safety Trust does think that that is one of the significant hindrances. There are other issues as well.

But it's a duplicative process and unreasonably slows the process, and I think if that part of it was eliminated it would help move things along.

Mr. TONKO. And what areas of duplication are the most concerned?

Mr. LESNIAK. There's an OMB—there's a similar cost-benefit analysis that's required by the OMB, and so why are we doing it two times. You know, we are not clear on that.

Mr. TONKO. OK. I thank you for that.

And what about NTSB itself? What about recommendations there? Are there still outstanding recommendations that haven't been implemented?

Mr. LESNIAK. There are. There are recommendations from NTSB that go way back, many that are supported by the industry and that—I think that NTSB recommendations, because they're an independent organization from the industry—from PHMSA itself, I think those recommendations ought to be taken seriously and prioritized for implementation.

Mr. TONKO. And does the bill that we address here today with these hearings help improve that in any way?

Mr. LESNIAK. It does, but it could go further. There are specific recommendations for providing information to emergency responders that NTSB has recommended that are not included and we think that those should be included.

Mr. TONKO. OK, and is leak detection technology an effective method to protect communities?

Mr. LESNIAK. It is, and it ought to be required with a standard for the effectiveness of that leak detection technology.

Mr. TONKO. And so stronger requirements——

Mr. LESNIAK. Yes.

Mr. TONKO [continuing]. For that detection system would be an improvement for——

Mr. LESNIAK. Yes.

Mr. TONKO. Do any of our other witnesses have recommendations on NTSB's recommendations?

Yes, Mr. Osman.

Mr. OSMAN. Thank you for the question.

We agree. NTSB recommendations are important and should be given great consideration by PHMSA, by the industry, by all of us. As we've said a few times, the pending rule makings that we believe PHMSA will complete this year will close out many outstanding NTSB recommendations and we think that's critical.

Mr. TONKO. Mr. Black, you had some comments you wanted to share?

Mr. BLACK. The primary discussion we are having with the NTSB right now is they're encouraging operators of all different pipeline segments to implement safety management systems.

We are doing a lot of workshops. We are encouraging pipeline operators to do that. The NTSB said the response by the industry exceeded expectations and we are learning from them.

Mr. TONKO. OK. Thank you very much.

And Ms. Sames?

Ms. SAMES. Yes, and the only thing that I would add is with the NTSB recommendations there—we are typically looking at what's the intent behind that particular recommendation.

There are some recommendations that may not be practical in the real world and those—in the conversations with them they'll say, you know, we are looking further out; where could technology

be in 10 years, 15 years, 20 years. Whereas the industry is looking at what can we do right now to meet the intent of what you want.

So I am always looking at how can I meet what you will want but maybe in a more practical way.

Mr. TONKO. OK. Is there an example that you could share?

Ms. SAMES. Sure. For example, the NTSB had a recommendation to make all pipelines piggable and when I looked at it I said, well, there's two options.

You can either dig up a lot of pipelines and replace them or you can create a new technology that will get through all the pipelines, because right now not all pipelines are piggable.

You cannot run an inline inspection in all pipelines because it's not—because of lack of pressure, because of turns, because of valves. There's a lot of different criteria that don't make a certain pipeline piggable. But if we advance technology we can get there.

Mr. TONKO. Thank you. Thank you very much.

The Chair now recognizes Mr.—Representative Walberg for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman. And today's hearing is very important. I think we all agree with that, and while I share some of the concerns of my colleagues about process and policy in the—in the discussion draft, I am hopeful that we can find bipartisan consensus as we move forward and we thank the panel for being here to help us in that process.

Mr. Osman, in your testimony you emphasize the importance of direct assessment. It seems like we should be adding tools to PHMSA's toolbox, not taking them away.

Can you describe what they are, these tools, and when they are most appropriate for use?

Mr. OSMAN. Sure. Thank you.

Direct assessment is an important safety technology in our toolbox. It involves looking for the precursors that might predict potential corrosion on a pipeline and going out and making excavations and actually looking at the pipe to understand if it's actually occurring.

It's a tool that we use when other types of assessment methods are not possible or not available. My colleague, Ms. Sames, just mentioned certain pipelines that can't accommodate internal inspection devices. That's one example of when we might use that technology and, you know, there's just always going to be certain areas of the pipe they can't use those internal inspection devices.

Also, sometimes there's a pipeline that cannot be shut down without having significant impacts to the folks who rely on that natural gas. So you wouldn't want to use an assessment method like hydrostatic pressure testing that requires a pipeline shutdown. It's another example of a good opportunity to use a direct assessment.

Mr. WALBERG. Mr. Black, how does direct assessment compare to other assessment methods in terms of preventing future pipeline integrity issues as opposed to finding existing problems?

Mr. BLACK. Well, for liquids it's also an important tool in areas that cannot be pigged. Example is facility piping where you still want to do that type of inspection but you can't get an inline inspection device there.

So we would not support a provision to eliminate that important tool. It wouldn't help safety.

Mr. WALBERG. OK.

Ms. Sames, are there situations where direct assessment of pipelines is more appropriate than other methods when conducting pipeline integrity assessments?

Ms. SAMES. Direct assessment is a predictive model. It's predicting where corrosion should be and where you have the potential for corrosion to occur in the future, whereas for inline inspection it's what's already occurred.

So if you're an operator that wants to predict where corrosion could be occurring you want direct assessment because it's helping you with those predictions and you're also digging up the line when you're doing direct assessment to confirm what you're finding.

Mr. WALBERG. OK.

Moving on and switching gears here a little bit, Mr. Osman, in PHMSA's draft proposal there was a placeholder for a Voluntary Information-Sharing program.

This is something I am very interested in and would like to get stakeholder feedback on. So do you think Congress should authorize such a program in our pipeline safety reauthorization this Congress?

Mr. OSMAN. Yes, absolutely. That would go a long way to helping us share the information we need to prove our safety performance.

Mr. WALBERG. Mr. Black?

Mr. BLACK. Yes, we'd agree. We'd encourage Congress to look at the report issued by a multistakeholder group that took years to work on this. Not everything in the administration proposal included what the report includes.

Mr. WALBERG. OK. Ms. Sames?

Ms. SAMES. Yes, and the administration bill, as Mr. Black indicated, doesn't quite go far enough. In my opinion, for example, it doesn't include distribution systems.

And so representing the distribution industry, we've been pushing for that sharing of information to go throughout the entire network.

Also, make sure the protections are there so that individuals sharing the information know they're protected from voluntarily providing safety concerns, safety issues.

They are findings very similar to the FAA, making sure that's in place, and then finally, incentives. If I am an operator and I am concerned that not all the protections are there, I am probably going to be hesitant to share information.

So anything that can encourage the sharing of information, even if it's as simple as PHMSA saying we are getting information from this particular operator, that would be good.

Mr. WALBERG. Other areas, Mr. Black and Mr. Osman, on this liability protection that you would suggest?

Mr. BLACK. Well, we would encourage PHMSA and Congress to encourage PHMSA to encourage voluntary self-reporting so that pipeline operators will identify, disclose, correct.

Right now they have that discretion but they use it very infrequently and it's not providing the incentive that it needs. That's an option to improve safety.

Mr. WALBERG. Well, my time has expired so I yield back.

Mr. RUSH [presiding]. I want to thank the gentleman for yielding back.

That concludes our panel and I want to thank each and every one of you for joining us today and for sharing your time and your thoughts, your insights with us, and we will continue to work with you as we proceed in the future.

Thank you so very much.

There's a request for unanimous consent to enter into the record the following letters and other documents from associated entities, including a letter from the National Society of Professional Engineers; a letter from Aclara Technologies, LLC; a letter from the American Petroleum Institute; a letter from the GPA Midstream Association; a letter from the International Union of Operating Engineers, Laborers' International Union of North America, the North American Building Trade Unions and United Association of Plumbers and Pipefitters; an analysis and draft proposal of the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2019 from the Pipeline and Hazardous Material Safety Administration; technical drafting assistance of the Safer Pipeline Act of 2019 from the Pipeline and Hazardous Materials Safety Administration; and finally, a letter from the National Association of Corrosion Engineering.

And without objection, this is so ordered.

[The information appears at the conclusion of the hearing.]

Mr. RUSH. I want to thank again the witnesses and I will remind the Members that, pursuant to committee rules, they have 10 business days to submit additional questions for the record to be answered by the witnesses who have appeared, and I ask each witness to respond promptly to any such questions that you may receive.

Seeing a consent from the witnesses, at this time the subcommittee stands adjourned.

[Whereupon, at 12:52 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

[DISCUSSION DRAFT]

116TH CONGRESS
1ST SESSION

H. R. _____

To amend title 49, United States Code, to improve the safety of the Nation's natural gas and hazardous liquid pipeline systems, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title 49, United States Code, to improve the safety of the Nation's natural gas and hazardous liquid pipeline systems, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Safer Pipelines Act of 2019".

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

(a) OPERATIONAL EXPENSES.—There are authorized to be appropriated to the Secretary of Transportation for

the necessary operational expenses of the Pipeline and Hazardous Materials Safety Administration the following amounts:

(1) $24,215,000 for fiscal year 2020.

(2) $24,941,450 for fiscal year 2021.

(3) $26,460,000 for fiscal year 2022.

(4) $27,254,000 for fiscal year 2023.

(b) GAS AND HAZARDOUS LIQUID.—Section 60125(a) of title 49, United States Code, is amended—

(1) in paragraph (1), by striking subparagraphs (A) through (D) and inserting the following:

"(A) $160,800,000 for fiscal year 2020, of which $10,000,000 shall be expended for carrying out such section 12 and $50,000,000 shall be expended for making grants;

"(B) $165,624,000 for fiscal year 2021 of which $10,000,000 shall be expended for carrying out such section 12 and $50,000,000 shall be expended for making grants;

"(C) $170,600,000 for fiscal year 2022, of which $10,000,000 shall be expended for carrying out such section 12 and $50,000,000 shall be expended for making grants; and

"(D) $175,700,000 for fiscal year 2023, of which $10,000,000 shall be expended for car-

rying out such section 12 and $50,885,000 shall be expended for making grants.'';

(2) in paragraph (2), by striking subparagraphs (A) through (D) and inserting the following:

''(A) $25,000,000 for fiscal year 2020, of which $5,000,000 shall be expended for carrying out such section 12 and $9,000,000 shall be expended for making grants;

''(B) $25,000,000 for fiscal year 2021, of which $5,000,000 shall be expended for carrying out such section 12 and $9,000, 000 shall be expended for making grants;

''(C) $26,000,000 for fiscal year 2022, of which $5,000,000 shall be expended for carrying out such section 12 and $9,000,000 shall be expended for making grants; and

''(D) $26,000,000 for fiscal year 2023, of which $5,000,000 shall be expended for carrying out such section 12 and $9,000,000 shall be expended for making grants.''; and

(3) in paragraph (3), by striking ''$8,000,000 for each of fiscal years 2017 through 2019'' and inserting ''$9,000,000 for each of fiscal years 2020 through 2023''.

(c) EMERGENCY RESPONSE GRANTS.—Section 60125(b)(2) of title 49, United States Code, is amended by striking ''$10,000,000 for each of fiscal years 2012 through 2015'' and inserting ''$12,000,000 for each of fiscal years 2020 through 2023''.

(d) PIPELINE SAFETY INFORMATION GRANTS TO COMMUNITIES.—Section 60130(c) of title 49, United States Code, is amended by striking ''section 2(b) of the PIPES Act of 2016, the Secretary shall expend $1,500,000 for each of fiscal years 2016 through 2019 to carry out this section. Such amounts shall not be derived from user fees collected under section 60301'' and inserting ''section 2(a) of the Safer Pipelines Act of 2019, the Secretary shall expend $2,000,000 for each of fiscal years 2020 through 2023 to carry out this section''.

(e) STATE DAMAGE PREVENTION PROGRAMS.—Section 60134(i) of title 49, United States Code is amended by striking ''$1,500,000 for each of fiscal years 2012 through 2015'' and inserting ''$2,000,000 for each of fiscal years 2020 through 2023''.

(f) ONE-CALL NOTIFICATION PROGRAMS.—Section 6107 of title 49, United States Code, is amended by striking ''$1,058,000 for each of fiscal years 2016 through 2019'' and inserting ''$2,000,000 for each of fiscal years 2020 through 2023''.

SEC. 3. DEFINITIONS.

(a) TRANSPORTING GAS.—Section 60101(a)(21) of title 49, United States Code, is amended to read as follows:

"(21) 'transporting gas' means—

"(A) the gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in interstate or foreign commerce; and

"(B) the movement of gas through regulated gathering lines;".

(b) TRANSPORTING HAZARDOUS LIQUID.—Section 60101(a)(22)(B) of title 49, United States Code, is amended by striking clause (i).

(c) GATHERING LINES.—Section 60101(b)(2) of title 49, United States Code, is amended by adding at the end the following:

"(C) The definition of 'regulated gathering line' shall include all onshore gathering lines operating at a pressure greater than 20 percent of specified minimum yield strength.".

SEC. 4. PURPOSE AND GENERAL AUTHORITY.

(a) COST-BENEFIT ANALYSIS.—Section 60102(b) of title 49, United States Code, is amended—

(1) in paragraph (2)—

(A) by striking subparagraphs (C) through (E); and

(B) by redesignating subparagraphs (F) and (G) as subparagraphs (C) and (D), respectively; and

(2) by striking paragraphs (3) through (7).

(b) SAFETY CONDITION REPORTS.—Section 60102(h)(2) of title 49, United States Code, is amended by striking ''State authorities'' and inserting ''State officials, including local emergency responders and appropriate on-scene coordinators for any applicable contingency plans''.

SEC. 5. RISK ANALYSIS AND INTEGRITY MANAGEMENT PROGRAMS.

(a) PHASEOUT OF DIRECT ASSESSMENTS.—

(1) IN GENERAL.—Section 60109(c) of title 49, United States Code, is amended by adding at the end the following:

''(12) PHASEOUT OF DIRECT ASSESSMENTS.—

''(A) PLAN.—Not later than 6 months after the date of enactment of this paragraph, the Secretary shall develop and implement a plan to eliminate direct assessment as a method of assessment under paragraph (3).

''(B) DEADLINE.—Beginning on the date that is 2 years after the date of enactment of this paragraph, an assessment under paragraph

(3) may not be conducted by direct assessment.''.

(2) CONFORMING AMENDMENTS.—

(A) HIGH-DENSITY POPULATION AREAS AND ENVIRONMENTALLY SENSITIVE AREAS.—Section 60109 of title 49, United States Code, is amended—

(i) in subsection (c)(3)(A), by striking ''direct assessment,''; and

(ii) in subsection (g)(1)(B), by striking ''external corrosion direct assessment,''.

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect on the date that is 2 years after the date of enactment of the Safer Pipelines Act of 2019.

(b) AUTOMATIC SPILL DETECTION AND SHUT OFF VALVES.—Section 60109(g) of title 49, United States Code, is amended—

(1) in paragraph (2), by striking ''This subsection'' and inserting ''Paragraph (1)''; and

(2) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and inserting after paragraph (2) the following:

"(3) AUTOMATIC SPILL DETECTION AND SHUT OFF VALVES.—Each operator of a hazardous liquid pipeline facility that is located in a high consequence area shall install automatic spill detection and shut-off valves for the pipeline facility.".

SEC. 6. COMMUNITY RIGHT-TO-KNOW AND EMERGENCY PREPAREDNESS.

(a) IN GENERAL.—Section 60116 of title 49, United States Code, is amended to read as follows:

"§ 60116. Community right-to-know and emergency preparedness

"(a) PUBLIC EDUCATION PROGRAMS.—

"(1) IN GENERAL.—Each owner or operator of a gas or hazardous liquid pipeline facility shall carry out a continuing program to educate the public on—

"(A) the use of a one-call notification system prior to excavation and other damage prevention activities;

"(B) the possible hazards associated with unintended releases from the pipeline facility; and

"(C) the physical indications that a release from a pipeline facility may have occurred, the steps that should be taken for public safety in

the event of such a release, and how to report such a release.

''(2) REVIEW AND MODIFICATION OF EXISTING PROGRAMS.—Not later than 1 year after the date of enactment of the Safer Pipelines Act of 2019, each owner or operator of a gas or hazardous liquid pipeline facility shall—

''(A) review its existing public education program for effectiveness, and modify the program as necessary; and

''(B) submit to the Secretary for review a detailed description of its public education program, including any modifications made to the program under subparagraph (A).

''(3) STANDARDS; MATERIAL.—The Secretary may—

''(A) issue standards for public education programs under this section, including standards providing for periodic review of such programs and modification of such programs as needed; and

''(B) develop material for use in the programs.

''(b) LIAISON WITH STATE AND LOCAL EMERGENCY RESPONSE ENTITIES.—

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Safer Pipelines Act of 2019, an operator of a gas or hazardous liquid pipeline facility shall establish liaison with—

"(A) the State emergency response commission established under section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 in each State in which the pipeline facility operates; and

"(B) the local emergency planning committee established under such section in each emergency planning district in which the pipeline facility operates.

"(2) AVAILABILITY OF INFORMATION.—Upon request, an operator of a gas or hazardous liquid pipeline facility shall make available to the applicable State emergency response commissions and local emergency planning committees—

"(A) the information required to be maintained under section 60102(d);

"(B) a copy of any integrity management program adopted by the operator under section 60109; and

"(C) information describing the implementation of the integrity management program

and the risks that the program is designed to address.

''(3) COMMUNITIES WITHOUT LOCAL EMERGENCY PLANNING COMMITTEES.—In a community for which a local emergency planning committee has not been established, the operator of a gas or hazardous liquid pipeline facility shall liaise with the local fire, police, and other emergency response entities.

''(e) PUBLIC AVAILABILITY OF REPORTS.—The Secretary shall make available to the public—

''(1) any safety-related condition report submitted by an operator under section 60102(h); and

''(2) a report of a pipeline incident filed by an operator pursuant to this chapter.

''(d) ACCESS TO INTEGRITY MANAGEMENT PROGRAM INFORMATION.—The Secretary shall prescribe requirements for public access to information regarding integrity management programs provided to a State authority pursuant to section 60109(e)(9)(C).

''(e) AVAILABILITY OF MAPS.—The owner or operator of each interstate gas pipeline facility and interstate hazardous liquid pipeline facility shall—

''(1) not later than 1 year after the date of enactment of this subsection, provide to each munici-

pality in which the pipeline facility is located a map identifying the location of such facility; and

''(2) provide to each such municipality an updated map not later than 6 months after any change to a location of such facility.

''(f) PIPELINE SEGMENT REPORTS.—

''(1) IN GENERAL.—Not later than 6 months after the date of enactment of the Safer Pipelines Act of 2019, and not less frequently than annually thereafter, each owner or operator of a gas or hazardous liquid pipeline facility shall submit to the Secretary a report on pipeline segments of the facility in accordance with this subsection.

''(2) CONTENTS OF REPORTS.—The owner or operator of a pipeline facility submitting a report under paragraph (1) shall include in the report the following information for each pipeline segment of the facility:

''(A) The business name, address, and telephone number of the owner or operator.

''(B) A summary description of the pipeline facility containing the pipeline segment, including a general facility map and a description of any product the pipeline facility transports,

the length of the facility, and origin and termination points.

''(C) State and local emergency response liaison information.

''(D) A description of periodic testing methods used on the pipeline segment and the frequency of such testing.

''(E) A summary of the results of periodic testing of the pipeline segment pursuant to section 60102, including any defects detected and actions taken to address the defects.

''(F) A description of the leak detection system in use on the pipeline segment and its sensitivity.

''(G) A 5-year incident history for the pipeline segment.

''(H) An inspection and enforcement history for the pipeline segment.

''(I) If applicable, a summary of integrity management program activities under section 60109(c)(3) related to the pipeline segment.

''(3) AUTHORITY OF SECRETARY.—The Secretary may modify or waive any of the information required to be included in a report under paragraph (2) for a pipeline facility if the Secretary determines

that the inclusion of such information would pose a risk to the security of the pipeline facility.

''(4) AVAILABILITY OF REPORTS.—The Secretary shall make each report submitted under paragraph (1) available to the public electronically.

''(5) PIPELINE SEGMENT DEFINED.—In this subsection, the term 'pipeline segment' means—

''(A) with respect to a gas pipeline facility—

''(i) the length of pipeline between the origin and the first compressor station;

''(ii) each length of pipeline between intermittent compressor stations; and

''(iii) the length of pipeline between the final compressor station and the termination point; and

''(B) with respect to a hazardous liquid pipeline facility—

''(i) the length of pipeline between the origin and the first pumping station;

''(ii) each length of pipeline between intermittent pumping stations; and

''(iii) the length of pipeline between the final pumping station and the termination point.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 601 is amended by striking the item relating to section 60116 and inserting the following:

"60116. Community right-to-know.".

SEC. 7. ACTIONS BY PRIVATE PERSONS.

Section 60121 of title 49, United States Code, is amended by adding at the end the following:

"(e) MANDAMUS.—A person may bring a civil action in an appropriate district court of the United States to compel the Secretary to perform a nondiscretionary duty under this chapter that the Secretary has failed to perform.".

SEC. 8. CIVIL PENALTIES.

Section 60122(a) of title 49, United States Code, is amended—

(1) in paragraph (1), by striking "The maximum civil penalty under this paragraph for a related series of violations is $2,000,000.";

(2) in paragraph (2), by striking "$50,000" and inserting "$200,000"; and

(3) in paragraph (3), by striking "$1,000" and inserting "$200,000".

SEC. 9. CRIMINAL PENALTIES.

Section 60123 of title 49, United States Code, is amended by striking "knowingly and willfully" each place it appears and inserting "knowingly or recklessly".

SEC. 10. MAXIMUM ALLOWABLE OPERATING PRESSURE.

Section 60139 of title 49, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by striking ''not later than 6 months after the date of enactment of this section'' and inserting ''not later than 2 years after the date of enactment of the Safer Pipelines Act of 2019''; and

(B) by striking ''in class 3 and class 4 locations and class 1 and class 2 high-consequence areas'';

(2) in subsection (d)—

(A) in paragraph (1)—

(i) by striking ''Not later than 18 months after the date of enactment of this section'' and inserting ''Not later than 2 years after the date of enactment of the Safer Pipelines Act of 2019''; and

(ii) by striking ''located in high-consequence areas and''; and

(B) by adding at the end the following:

''(4) REQUIREMENT.—The Secretary shall include in the regulations issued under this paragraph a requirement that all natural gas transmission pipe-

lines be subjected to a hydrostatic pressure test that incorporates a spike test.''; and

(3) by striking subsection (e).

SEC. 11. DIRECT HIRE AUTHORITY FOR PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION.

(a) AUTHORITY.—The Administrator of the Pipeline and Hazardous Materials Safety Administration may appoint qualified candidates to positions described in subsection (b) without regard to sections 3309 through 3319 of title 5, United States Code.

(b) APPLICABILITY.—The authority under subsection (a) applies with respect to candidates for any position that would likely allow increased activities relating to pipeline safety, as determined by the Administrator.

(c) TERMINATION.—The authority to make appointments under this section shall not be available after September 30, 2024.

SEC. 12. REPORT.

Not later than 180 days after the date of enactment of this Act, and annually thereafter through calendar year 2023, the Administrator of the Pipeline and Hazardous Materials Safety Administration shall submit to Congress a report on the efforts of the Administration to hire

women, minorities, and veterans as inspectors since January 1, 2012.

I

116TH CONGRESS
1ST SESSION

H. R. 2139

To amend title 49, United States Code, to improve pipeline safety, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 8, 2019

Mrs. TRAHAN (for herself, Mr. MOULTON, and Mr. KENNEDY) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend title 49, United States Code, to improve pipeline safety, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Leonel Rondon Pipeline Safety Act".

SEC. 2. DISTRIBUTION INTEGRITY MANAGEMENT PLANS.

(a) IN GENERAL.—Section 60109(e) of title 49, United States Code, is amended by adding at the end the following:

"(7) IN GENERAL.—

"(A) EVALUATION OF RISK.—Not later than 1 year after the date of enactment of this paragraph, the Secretary shall promulgate regulations that ensure that each distribution integrity management plan developed by an operator of a distribution pipeline includes an evaluation of—

"(i) the risks resulting from the presence of cast iron pipes and mains in the distribution system; and

"(ii) the risks that could lead to or result from the operation of a distribution pipeline above the maximum allowable operating pressure (as described in section 192.619 of title 49, Code of Federal Regulations (or successor regulations)).

"(B) CONSIDERATION.—In the evaluations required in a plan under subparagraph (A), the regulations promulgated by the Secretary shall ensure that the distribution integrity management plan evaluates future potential threats in

a manner that considers factors other than past observed abnormal operating conditions (as defined in section 192.803 of title 49, Code of Federal Regulations (or successor regulations)) in ranking risks and identifying measures to mitigate those risks under that subparagraph, so that operators avoid using a risk rating of zero for low probability events unless otherwise supported by engineering analysis.

"(C) DEADLINES.—

"(i) IN GENERAL.—Not later than 180 days after the date of enactment of this paragraph, each operator of a distribution pipeline shall submit to the Secretary or to the relevant certified State authority, if applicable, a copy of—

"(I) the distribution integrity management plan of the operator;

"(II) the emergency response plan under section 192.615 of title 49, Code of Federal Regulations (or successor regulations); and

"(III) the procedural manual for operations, maintenance, and emergencies under section 192.605 of title

49, Code of Federal Regulations (or successor regulations).

"(ii) UPDATES.—Each operator of a distribution pipeline shall submit to the Secretary an updated plan or manual described in clause (i) by not later than 60 days after the date of the update.".

(b) MONITORING.—Section 60105(e) of title 49, United States Code, is amended—

(1) in the second sentence, by striking "A State" and inserting the following:

"(2) COOPERATION.—A State";

(2) by striking "The Secretary" and inserting the following:

"(1) IN GENERAL.—The Secretary"; and

(3) by adding at the end the following:

"(3) AUDIT PROGRAM.—Not later than 1 year after the date of enactment of this paragraph, the Secretary shall promulgate regulations to update the annual State Program Evaluations to—

"(A) ensure that a State authority has the capability to sufficiently review and evaluate the adequacy of the plans and manuals described in section 60109(e)(7)(C)(i); and

"(B) require that a State authority has a sufficient number of inspectors to ensure safe operations, as determined by a formula that takes into account factors including but not limited to—

"(i) the number of miles of cast iron pipe in the State;

"(ii) the number of customers in the State;

"(iii) population density in areas with gas distribution pipeline;

"(iv) the age of the gas distribution system in the State; and

"(v) environmental factors, including relevant geological issues.".

SEC. 3. EMERGENCY RESPONSE PLANS.

Section 60102 of title 49, United States Code, is amended by adding at the end the following:

"(q) EMERGENCY RESPONSE PLANS.—Not later than 1 year after the date of the enactment of this subsection, the Secretary shall promulgate regulations to ensure that each emergency response plan under section 192.615 of title 49, Code of Federal Regulations (or successor regulations), developed by an operator of a distribution pipeline includes written procedures for—

"(1) establishing communication with fire, police, and other relevant public officials as soon as practicable, but not later than 30 minutes, after a gas pipeline emergency that—

"(A) includes fires, explosions, or one or more fatalities; or

"(B) results in the shutdown of gas service to more than 100 customers;

"(2) establishing public communication as soon as practicable and in consultation with fire, police, and other public officials after a gas pipeline emergency that—

"(A) includes fires, explosions, or one or more fatalities; or

"(B) results in the shutdown of gas service to more than 100 customers; and

"(3) the development and implementation of a voluntary, opt-in system that would allow operators of distribution pipelines to rapidly communicate with customers in the event of an emergency.".

SEC. 4. OPERATIONS AND MAINTENANCE MANUALS.

Section 60102 of title 49, United States Code (as amended by section 3), is amended by adding at the end the following:

"(r) OPERATIONS AND MAINTENANCE MANUALS.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall promulgate regulations to ensure that each procedural manual for operations, maintenance, and emergencies under section 192.605 of title 49, Code of Federal Regulations (or successor regulations), developed by an operator of a distribution pipeline includes written procedures for—

"(1) responding to overpressurization alarms, including a clear timeline and order of operations for shutting down portions of the gas distribution system, if necessary; and

"(2) a detailed procedure for a management of change process, which shall be applied to all changes to the distribution system, and which shall ensure that relevant employees of an operator of a distribution pipeline, as determined through the regulations, review construction documents for accuracy, completeness, and correctness.".

SEC. 5. PIPELINE SAFETY MANAGEMENT SYSTEMS.

Section 60102 of title 49, United States Code (as amended by section 4), is amended by adding at the end the following:

"(s) PIPELINE SAFETY MANAGEMENT SYSTEMS.—

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall promulgate regulations directing each operator of a distribution pipeline to develop and implement a pipeline safety management systems framework in accordance with Recommended Practice 1173 of the American Petroleum Institute (API RP 1173).

"(2) UPDATES.—The Secretary may periodically revise such regulations to adopt new best industry practices for promoting safety management systems, as appropriate.

"(3) SUBMISSION.—Each operator of a distribution pipeline shall submit to the Secretary or the relevant State authority, as certified under section 60105 of title 49, United States Code—

"(A) a copy of the pipeline safety management systems framework developed under paragraph (1) by not later than 2 years after the date of enactment of this subsection; and

"(B) any updates to the framework described in subparagraph (A) by not later than 3 years after the date of enactment of this subsection after the update.

''(4) EVALUATION AND CERTIFICATION.—Under a timeline established by the Secretary through regulation, the Secretary or the relevant State authority, as certified under section 60105 of title 49, United States Code, shall—

''(A) evaluate pipeline safety management systems frameworks developed under paragraph (1), including by using independent third-party evaluators if necessary; and

''(B) certify that—

''(i) those frameworks are effective and complete; and

''(ii) operators of distribution pipelines are in compliance with those frameworks.''.

SEC. 6. PIPELINE SAFETY PRACTICES.

Section 60102 of title 49, United States Code (as amended by section 5), is amended by adding at the end the following:

''(t) OTHER PIPELINE SAFETY PRACTICES.—

''(1) RECORDS.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall promulgate regulations to require an operator of a distribution pipeline—

"(A) to develop and maintain traceable, reliable, complete, and up-to-date records of the gas distribution system in each region of operation that depict high-, medium-, and low-gas pressure systems, including maps and other drawings; and

"(B) to ensure that the records described in subparagraph (A) are accessible to all employees of the operator and provided to the Secretary or the relevant State authority.

"(2) APPROVAL OF CERTAIN ACTIVITIES.—

"(A) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall promulgate regulations to require that, before carrying out any covered task (as defined in section 192.801(b) of title 49, Code of Federal Regulations (or successor regulations)), the covered task is approved by a professional engineer licensed to practice in the State in which it is to be carried out.

"(B) INCLUSION.—In promulgating regulations under subparagraph (A), the Secretary shall ensure that professional engineers are provided access to all relevant records and prior

work plans needed to certify the safety of the covered task.

"(C) APPLICATION.—The following provisions shall not apply to a standard promulgated under subparagraph (A):

"(i) Subsections (c) and (d) of section 60118.

"(ii) Section 60131(e)(5).

"(3) PRESENCE OF QUALIFIED EMPLOYEES.—

"(A) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall promulgate regulations to require that not less than 1 employee of an operator of a distribution pipeline who is qualified to perform relevant covered tasks (as defined in section 192.801(b) of title 49, Code of Federal Regulations (or successor regulations)), shall monitor gas pressure and have the capability to shut down the flow of gas at a district regulator station during any construction project that has the potential to cause a hazardous over-pressurization at that station, including tie-ins and abandonment of distribution lines and mains, based on an evaluation of

threats that could result in unsafe operation conducted by the operator.

"(B) EXCLUSION.—In promulgating regulations under subparagraph (A), the Secretary shall ensure that those regulations do not apply to a district regulating station that has a monitoring system and the capability for remote or automatic shutoff.

"(4) DISTRICT REGULATOR STATIONS.—

"(A) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall promulgate regulations to require that each operator of a distribution pipeline assesses and upgrades, as appropriate, each district regulator station of the operator to ensure that—

"(i) there is no possibility for a common mode of failure in the regulator technology of the station that could lead to an operating pressure that is greater than the maximum allowable operating pressure (as described in section 192.619 of title 49, Code of Federal Regulations (or successor regulations));

"(ii) the station has monitoring technology that provides constant awareness of gas pressure at the station; and

"(iii) the station has additional pressure-relieving safety technology, such as a relief valve or automatic shutoff valve, as appropriate for the configuration and siting of the station.

"(5) MINIMUM STAFFING REQUIREMENTS.—

"(A) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall promulgate regulations to promote sufficient staffing for monitoring and regulating gas pressure levels by each operator of a distribution pipeline.

"(B) INCLUSIONS.—Regulations promulgated under subparagraph (A) shall consider—

"(i) the total miles of gas main and service pipeline within the service area of the operator of the distribution pipeline;

"(ii) the age and material of the pipes within the service area of the operator of the distribution pipeline; and

"(iii) the number and density of customers within the service area of the operator of the distribution pipeline.".

SEC. 7. CIVIL PENALTIES.

Section 60122(a)(1) of title 49, United States Code, is amended—

(1) in the first sentence, by striking "$200,000" and inserting "$20,000,000";

(2) in the third sentence, by striking "$2,000,000" and inserting "$200,000,000"; and

(3) by adding at the end the following: "The Secretary shall annually adjust the penalties under this paragraph for inflation.".

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NSPE NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

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June 18, 2019

The Honorable Bobby Rush, Chairman
The Honorable Fred Upton, Ranking Member
Subcommittee on Energy, Committee on Energy and Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

NSPE Public Comment RE: House Energy Subcommittee Hearing: *Legislative Solutions to Make Our Nation's Pipelines Safer*

On behalf of more than 31,000 members of the National Society of Professional Engineers, these comments are submitted for consideration of inclusion into the public record for the House Energy Subcommittee's June 19 hearing on "Legislative Solutions to Make Our Nation's Pipelines Safer." NSPE's commitment to the protection of the public health, safety, and welfare warrants a seat at the table in the discussion on pipeline safety.

NSPE has consistently and proactively advocated for the need to ensure that major technological, safety, and ethical implications are considered in the discussion surrounding pipeline safety. NSPE played a crucial role in the discussions about improving public safety after the Merrimack Valley gas pipeline explosion in September 2018. As part of its investigation, the National Transportation Safety Board contacted NSPE, seeking information about licensing exemptions for public utility workers. NTSB was concerned that the exemption may have played a role in the explosion. Several weeks were spent discussing the engineering licensing process, its standards, and NSPE's opposition to licensing exemptions. NTSB recommended that Massachusetts eliminate the engineer licensing exemption for public utilities, which the commonwealth did.

It is with this role and past involvement in mind that NSPE urges the Energy Subcommittee to forward H.R. 2139 to the full Energy and Commerce Committee for its consideration.

The witnesses that represent the gas industry will likely argue against the minimal additional cost associated with enacting the common-sense safety measures in H.R. 2139. These measures, however, do nothing more than apply the existing, readily available, and statutorily established mechanism to ensure the public health, safety, and welfare considerations of requiring a licensed professional engineer in responsible charge of installations that pose significant risk to the public. These same measures are routinely required for infrastructure that arguably poses less of a risk than gas pipelines. Therefore, NSPE believes it is reasonable to roll gas utility pipelines into those requirements.

We do not doubt the sincerity of the gas industry's concern for safety. The public, however, deserves more than assurances that the industry will "do better" in the future with regard to public safety. Common sense, proven, and minimally costly safeguards are readily available. NSPE urges committee members to weigh the benefit of protecting and saving lives against the financial cost of changes that will lead to improved emergency response processes and documentation, and improved oversight of pipeline changes than can have a direct impact on public safety. Even with these added costs, the industry will continue to grow, thrive, and profit. NSPE also encourages committee members to consider the responsibility they have to their constituents to take action, rather than waiting for industry to implement changes on its own.

The explosions that occurred in Massachusetts' Merrimack Valley were the result of over-pressurization. On the day of the accident, Columbia Gas was in the midst of a broad plan to replace nearly 7,600 feet of natural gas main. The pipeline network uses regulator-sensing lines to maintain low gas pressure within the system. That day, a section of pipeline and its accompanying pressure regulator had been replaced, but the regulator wasn't properly reattached to the new pipe. Consequently, the system read a drop in pressure and automatically adjusted by increasing the flow of gas to the network. The result was a sudden and severe increase in pressure that caused explosions, killing one person, injuring more than a dozen, and destroying 131 structures.

Where public utilities are concerned, the general population rarely has the option of choosing its provider. When the average person moves to a new neighborhood, she can't decide who will provide her electricity, her water, or her natural gas. In those few areas where competition does exist, even though the providers may be different, the physical delivery system is the same. Consequently, no market-based mechanism exists to compel companies toward improved safety, even after a deadly accident like the one in Merrimack Valley. The responsibility, therefore, falls to Congress and regulatory bodies to ensure that safety is paramount.

In his written testimony, submitted to this subcommittee on May 1, Carl Weimer, who is providing testimony again today, cited H.R. 2139 as a "hopeful initiative" in the ongoing effort to increase pipeline safety.[1] NSPE agrees that H.R. 2139 is a hopeful initiative, making narrowly tailored and specific changes to the way natural gas pipelines are maintained, monitored, and modified, so as to better protect the public. We appeal to the members of this subcommittee for their support.

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[1] https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Testimony-Weimer.pdf

I thank the Subcommittee Chair and Ranking Member for scheduling a hearing on this important topic, and for their consideration of these comments.

Sincerely,

Michael Aitken,
PE, F.NSPE President

Cc: NSPE Board of Directors

June 18, 2019

The Honorable Bobby Rush
Chairman
Energy and Commerce Committee
Subcommittee on Energy
U.S. House of Representatives
Committee on Appropriations
Washington, DC 20515

The Honorable Fred Upton
Ranking Member
Energy and Commerce Committee
Subcommittee on Energy
U.S. House of Representatives
Committee on Appropriations
Washington, DC 20515

Dear Chairman Rush and Ranking Member Upton:

As a leading technology provider to electric, gas and water utilities, Aclara Technologies, LLC, urges the subcommittee to support the use of technology to improve the safety, performance, and efficiency of our country's natural gas distribution networks. We support provisions in the "Safer Pipelines Act of 2019" discussion draft that would increase the use of methane leak detection technologies at facilities in high consequence areas (HCA) and urge Congress to support deployment of methane leak detection technologies and gas pressure monitoring along distribution lines in HCA as well to improve safety, system integrity, and performance.

The U.S. currently has 2.4 million miles of natural gas pipeline infrastructure and approximately 400 storage fields, which combined carry around 25% of the total energy consumed in the U.S. The low cost and relative abundance of natural gas is driving the aggressive expansion of new pipeline infrastructure. It is also causing increased use of existing infrastructure, putting pressure on an ageing system. As our reliance on natural gas continues to expand, so will the pressures on our natural gas infrastructure. As such, it is imperative that Congress works to encourage adoption of methane detection technologies *along natural gas distribution lines*, which can reduce the occurrence and severity of methane leaks which cost utilities money and can present a significant risk to public health.

Aclara offers its strong support for the advancement of technologies that can improve the safety of our nation's natural gas distribution networks by providing enhanced monitoring, detection, and control capabilities. These technologies are an important and cost-effective way to increase reliability, efficiency, and safety of our ageing infrastructure. Continuous gas pressure monitoring enhances early leak detection by recognizing and interpreting gas line pressure fluctuations. A sudden, unexplained drop in pressure could be a burst pipe or a gas leak. Utilizing an AMI supported gas pressure monitoring system will provide utilities with a constant stream of data to alert them to these potential issues. Smart pressure monitoring requires a wireless communications system including sensors that measure pressure at critical points, software that analyses the pressure status at such points and calculates responses to achieve a desired pressure, and a controller device to prompt smart valves whose use can save energy. Smart gas pressure management will allow utilities to better monitor and control system gas pressures according to demand. While reducing potential leaks, it can also reduce operating cost associated with site visits and "linepack".

Advanced leak detection technologies are crucial to decreasing the risk of major gas leaks and accidents. Take, for example, the Aliso Canyon methane leak in California, which lasted over

four months and released approximately 97,100 metric tons of methane into the atmosphere (more than the estimated *total* annual emissions from the entire U.S. pipeline infrastructure). Leaks like the one in Aliso Canyon demonstrate that the magnitude of risk faced by the natural gas industry is great, and that even more substantial risks exist for citizens living in the surrounding area and the environment. The key to reducing methane leakage – and associated environmental, safety, and economic impacts - from natural gas distribution networks is being able to locate and close leaks quickly and effectively.

For these reasons, we support the provision in the "Safer Pipelines Act of 2019" that requires the installation of automatic leak detection and shutoff valves for pipeline facilities located in high consequence areas. The distribution lines around those facilities are also, however, vulnerable to leaks and pressure irregularities, and methane leak detection technologies should also be deployed along those distribution lines within high consequence areas as well.

Aclara offers its full support for the expanded use of real-time methane leak detection and gas pressure monitoring technologies around natural gas facilities and associated distribution lines within high consequence areas. These technologies will significantly improve system integrity and safety and will be crucial as the country's natural gas distribution networks continue to age and as the risks for utilities and network operators rise. Thank you for your consideration of our comments and we look forward to working with the subcommittee on this important legislation.

Sincerely,

Josh Chaise
Vice President, Product Management, Water and Gas
Aclara Technologies, LLC

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The Honorable Bobby Rush
Chairman
Subcommittee on Energy
U.S. House of Representatives
2188 Rayburn House Office Building
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The Honorable Fred Upton
Ranking Member
Subcommittee on Energy
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2183 Rayburn House Office Building
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Dear Chairman Rush and Ranking Member Upton,

On behalf of the American Petroleum Institute (API), we appreciate the opportunity to submit comments as part of this important hearing highlighting pipeline safety, specifically the discussion draft "Safer Pipeline Act of 2019" addressing the reauthorization of PHMSA and the Pipeline Safety Act of 2016.

The American Petroleum Institute (API) is the only national trade association representing all facets of the oil and natural gas industry, which supports 10.3 million jobs and 8 percent of the U.S. economy. API's more than 625 members include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses and service and supply firms. As Vice President of API Midstream and Industry Operations, I am responsible for all energy infrastructure issues, including those related to the gathering, processing, storage, and transportation of oil and natural gas.

Pipelines remain one of the safest ways to deliver the energy we use every day. However, to maintain this strong safety record and ensure consumer access to clean, abundant, and affordable energy, it is imperative that the regulatory environment and the Pipeline and Hazardous Materials Safety Administration (PHMSA) address current and future safety challenges. We recognize and appreciate PHMSA's efforts to implement past Congressional mandates, but more work needs to be done to institute practical and performance-based regulations. Thus, as the Subcommittee considers the reauthorization of PHMSA and other safety programs, we encourage strong consideration of industry priorities that will maximize our investment in people, technology, and safety culture to effectively advance pipeline safety.

PIPELINE SAFETY REAUTHORIZATION PRIORITIES

As stated earlier, to improve upon our strong safety record and reach our goal of zero pipeline incidents, it is imperative that the regulatory environment and PHMSA be positioned to meet current and future safety challenges. As such, there are three priority areas where PHMSA reauthorization can support the shared objective of industry and the regulating agency in advancing pipeline safety.

RECOGNIZING THE IMPORTANCE OF INNOVATION AND TECHNOLOGY AND RISK BASED APPROACHES TO MANAGING PIPELINE INTEGRITY

Although API and its members appreciate the emphasis PHMSA has placed recently on addressing mandates and National Transportation Safety Board (NTSB) recommendations, we strongly encourage PHMSA to act in a timely manner and not lose sight of the importance of a holistic, performance-based regulatory approach that maximizes the industry's ability to use the latest advances in new technologies and techniques to manage pipeline safety risk.

With this in mind, outdated regulations that only allow for new technologies to be used one rulemaking at a time must be updated. While those regulations reflected the technology and best thinking available at the time of adoption, they have not kept pace with advances in pipeline safety technology and modern engineering practices. We recognize PHMSA's effort over the last two decades to pursue performance-based regulations over prescriptive ones – in other words, an approach that focuses on the desired outcomes (in this case, fewer incidents) rather than prescriptive (i.e. "check-the-box) processes or procedures. This is compliant with direction provided by the Office of Management and Budget (OMB) to give preference to performance-based standards. A performance-based regulatory model allows operators the flexibility to utilize the latest advances (e.g. technologies, processes and procedures) in inspection and detection technologies as soon as it is practicable to focus on the desired outcome of fewer incidents. For instance, PHMSA issued Integrity Management (IM) regulations that provide operators with the ability to use different in-line inspection (ILI) tools that are better at detecting a defect in specific types of pipe.

Retaining Direct Assessment as Agreed by Gas Pipeline Advisory Committee

Keeping in mind the importance of flexibility and fit for purpose requirements, API has concerns with the Subcommittee's recommendation in the 2019 Act to remove an operator's ability to utilize the direct assessment approach. Specifically, it may not be as possible, efficient or effective to hydrotest or assess some shorter segments with ILI. Direct assessment can provide valuable integrity management information if properly applied to the threats present on the segment. Direct assessment has demonstrated success in finding features that warrant evaluation and repair, particularly on pipelines that cannot accommodate in-line inspection. More importantly, during a series of Gas Pipeline Advisory Committee (GPAC) meetings in 2017 and 2018, PHMSA and the GPAC considered restrictions on the use of direct assessment but agreed to retain the method for the reasons discussed above.

Fit for Purpose Automatic Spill Detection and Shutoff Valves Requirement

API recommends using a risk-based approach to determine where such valves are required versus assuming that a one-size fits-all mandate of installing valves as recommended in Section. As written, the draft language indicates each operator of a hazardous liquids pipeline facility that is in a high consequence area (HCA) shall install automatic spill detection and shutoff valves for the pipeline facility. This type of prescriptive requirement does not work across all situations and could result in a greater risk to these systems. The technology is still advancing and a shutdown sequence in some instances could cause a surge in a pipeline that compounds a leak. As such, API supports the approach identified in

49 CFR 195.452 that addresses the use of Emergency Flow Restriction Devices (EFRDs) that allow an operator to determine where valves are needed to protect an HCA. Once again, recommending a risk-based approach as determined by the operator and with the approval of PHMSA that addresses the unique nature of each system is more effective in protecting people and the environment.

Institutionalizing a Pilot Program is Key to Advancing Safety

API is supportive of the US Department of Transportation's (USDOT) and PHMSA's legislative proposal to institute a pilot program founded on the elements of similar programs within other modes within USDOT. We also appreciate that the Administration's proposal recognizes the importance of leading industry standards and provides for the pilot program to be informed by standards or practices developed under a program accredited by the American National Standards Institute. PHMSA should be commended for considering a pilot which can serve as a vehicle for testing updated integrity management repair criteria. As industry seeks to harness the benefits of inspection technology advances and programmatic improvements contained in the recently updated API Recommended Practice 1160, Managing System Integrity for Hazardous Liquid Pipelines, we welcome this potential opportunity to demonstrate the importance of innovation and technology, and improving safety through a pilot or special permit process. We are hopeful we can establish a process that can serve as a framework for member companies to use in their individual requests and allow PHMSA to collect the necessary data. Through reauthorization this would serve to support rulemaking and incorporation by reference RP 1160.

Importance of More Timely Incorporation by Reference

There are more than 700 API standards referenced in Federal regulation. As these standards are amended or recertified through the American National Standards Institute (ANSI)-accredited process at a minimum of every 5 years, Federal regulations often are unable to be updated in a timely manner to reflect these important leading practices within the industry. Currently, approximately 50 percent of the instances where PHMSA cites API standards are not referencing the most recent version of those standards. As API standards are updated or as new ones are developed, PHMSA should execute a more timely and frequent review process that can use the existing rulemaking processes to incorporate by reference the latest edition or the first edition of appropriate standards. We applaud PHMSA for including a provision in their legislative proposal on timely incorporation by reference, as API strives to ensure that all pipeline standards are truly consensus-based. We feel that PHMSA's continued participation and full involvement can help to speed the incorporation-by-reference process.

MODERNIZING PHMSA AND REGULATIONS

As PHMSA and the energy industry together continue to drive toward our shared goal of zero pipeline incidents, a modernized regulator with the necessary tools, well-trained staff, and streamlined programs can bring needed certainty and consistency into the regulatory and oversight process. While the oil and natural gas industry continues to work proactively, through our standards development process and collaboration with regulators and other stakeholders, to achieve our goal of zero incidents, there are additional regulatory reforms that we believe will help to further enhance pipeline safety.

Continuing to Recognize the Importance of a Cost Benefit Analysis

Performing a reasoned cost benefit analysis before making significant regulatory changes must continue to be a part of the regulatory process and encourage the Committee to strongly reconsider removal of the cost benefit requirement as proposed in Section 4 of the 2019 Act.

Despite taking some time for PHMSA to prepare the cost-benefit analysis during the rulemaking process, it is an important step in the comprehensive rulemaking process. PHMSA's cost-benefit analyses provides valuable input to the public comment and advisory committee review processes. Since there are usually multiple practical alternatives to achieve any safety objective, the cost-benefit analysis helps PHMSA and stakeholders compare and contrast the alternatives and identify the best option.

A statutory requirement to consider costs and benefits in health, safety, and environmental regulations is not unique to PHMSA as Congress has, as a part of various acts and in certain jurisdictional areas, required the Occupational Health Safety Administration (OHSA), Mine Safety Health Administration (MSHA), and Environmental Protection Agency (EPA) to analyze costs and benefits during rulemaking. An example of the important role cost-benefit plays in the regulatory process is PHMSA consideration of class location changes through rulemaking. With today's processes and technologies, pipeline safety can be managed effectively and at an equivalent level of safety through data-driven inspection and maintenance, instead of costly unnecessary and arbitrary pipe replacements required by the current class location change regulations.

To that end, API and its members strongly support the collaborative approach to review and finalize regulations through the GPAC process. The GPAC process is a transparent and balanced forum that has demonstrated the ability to build consensus around complex regulatory issues, as witnessed with the pending gas and liquid transmission pipeline safety regulations.

Instituting Risk Based Gathering Lines Regulations is Critical

As the largest trade association representing all facets of the oil and gas industry, API is strongly opposed to the proposed amendments in Section 3 of the Subcommittees recent draft legislation. The amendments would alter longstanding procedural protections that limit PHMSA's jurisdiction over rural gathering lines, override a multi-year effort by PHMSA and other interested stakeholders to establish new, risk-based regulations for rural gathering lines, and impose billions of dollars in unnecessary compliance costs on the gathering industry—costs that would be disproportionately born by small companies that operate some of the lowest risk pipelines in the United States. Accordingly, API is respectfully requesting that Section 3 be eliminated from the Safer Pipelines Act of 2019 in its entirety.

Adding a Mandamus Clause Will Further Delay PHMSA

API does not believe a Mandamus clause as included in Section 7 of the 2019 Act will improve safety. For example, past experiences with citizen-suit provisions, such as the Clean Air Act, have resulted in expensive and time-consuming legal actions with little to no benefit. If the concern of the Committee is PHMSA delays in addressing Congressional mandates, then overwhelming them with litigation will not

improve the situation. Court forced action on citizen suits could divert limited PHMSA resources away from the highest priority needs for pipeline safety improvement.

Normalizing Incident Reporting Threshold Maximizes Resource Allocation

There are other areas where outdated regulations also drive inefficiencies and resource allocation to less impactful safety priorities. For example, in current regulations, pipeline operators are required to report pipeline incidents if they meet certain conditions, including a clean-up cost of $50,000 or higher. However, PHMSA set this threshold in 1984 and has not indexed it for inflation since. As such, if incident reporting were indexed to this 1984 cost, it would allow pipeline operators to better utilize and allocate resources toward more significant incidents. Congress should require PHMSA to index its incident reporting dollar threshold and appreciate PHMSA including a provision in their recent legislative proposal.

Retain Maximum Allowable Operating Pressure (MAOP) Requirement Recommendations as Agreed by GPAC

The Subcommittee's proposal in Section 10 of the 2019 Act to require all-natural gas transmission pipelines to undergo a spike hydrostatic pressure test has no engineering basis and contradicts the GPAC's recommendations. Spike testing was designed as an integrity assessment technique with a very specific purpose: to expose significant time-dependent linear defects on pipelines, including environmental cracking. While spike testing is an important pipeline safety tool where time-dependent cracking is a threat, it is not relevant to confirming MAOP. Such a broad application of spike testing would be destructive to our nation's natural gas pipeline infrastructure. Spike testing is an aggressive technique that imparts significant stresses on the pipeline, its components, and the testing equipment. This can increase the risk of failures of piping and components that would otherwise pose no threat during the service life of the pipeline. Such failures would require repairs and cause other adverse effects, such as further customer service disruptions.

Enhancing Research and Development Collaboration

Our industry continues to place a great deal of emphasis and resources on research and development. Specifically, improvements to pipeline integrity inspection capabilities are a strategic objective that have driven our industry to invest in furthering in-line inspection tool detection, ultimately preventing incidents from occurring. As such, industry stands willing to explore opportunities to further strengthen collaboration with PHMSA on research and development, collectively shaping a longer-term strategy that drives innovation, informs regulations, and ultimately improves pipeline safety performance.

Providing Flexible Hiring Authority for PHMSA

The oil and natural gas industry strive to have well trained and qualified PHMSA pipeline inspectors to help bring certainty and consistency to the inspection and enforcement of federal pipeline safety regulations. However, pipeline inspectors frequently come into PHMSA with limited pipeline safety experience and for those with experience, turnover is a concern. As such, similar to other agency hiring authority for specialty positions, the ability to compensate pipeline inspectors at market rates through PHMSA's use of Schedule A employees with streamlined hiring and flexible pay levels would enhance

PHMSA's ability to attract and retain expert pipeline inspectors, effectively increasing their efficacy and the overall safety of the industry as a result We agree with the Subcommittees proposal in Section 11 of the 2019 Act in supporting PHMSA by providing that hiring authority flexibility.

PROTECTING PIPELINES, PEOPLE AND ENVIRONMENT

Pipelines are one of the safest ways to deliver the energy American families and consumers use every day. However, recent attacks on oil and natural gas infrastructure have pointed out the need for increased awareness of pipeline infrastructure, the impacts of damage to it, and the importance of enforcement against perpetrators of such attacks. Disruptions to critical infrastructure can have impacts on local populations, the environment and the economy. While we respect the Constitutional right to free speech and peaceful protest, we believe that an individual that criminally trespasses onto private property who then endangers their own life, the lives of others and the environment is conducting an illegal act.

Fit for Purpose Public Awareness and Information Sharing

API supports the general premise of Section 6 of the 2019 Act to enhance the public and first-responder's ability to get necessary information that will better enable them to make decisions about their safety and the safety of the public in the event of a release. API recommends that RP 1162 third edition, that is scheduled to be published in 2020, be the framework for how best to facilitate the transfer and types of information. This is in contract with proposed bill language. API encourages RP 1162 third edition to be incorporated by reference when it is published and reinforce PHMSA's authority to review and request information regarding operator's public awareness programs, to occur every 4 years, the most recent of which occurred in 2018.

API also supports first responders and wants them to be prepared in the event of a spill. However, we do not believe that the availability of integrity management information to local responders facilitates and reinforces this preparedness goal. API's RP 1162 third edition, to be published in 2020, defines this audience and the information that facilitates this preparedness goal, and we encourage incorporation by reference when it is published to address the types of information that should be distributed.

In keeping with our position of information given to first responders, API does not support the dissemination of unredacted reports to the general public, as this could potentially be a grave security threat to sensitive and critical infrastructure. The safe operation of our pipelines is our utmost priority and implementing laws to make this information publicly available would greatly increase the ability of those who wish to do harm to critical energy infrastructure to pinpoint targets with the maximum potential of disruption and/or loss of life. API supports providing PHMSA with access to this documentation, as is currently required.

Criminal Penalty to Protect Communities

For the safety of the people and the environment, Congress should do more to prevent threats to critical infrastructure like oil and natural gas pipelines by strengthening the breadth of protections around pipelines and facilities and expanding the scope of actions under criminal provision. As such API supports PHMSA and the industry proposals that ensure facility security by deterring those who hope to interrupt America's flow of energy and create a significant safety risk to surrounding communities, first responders, and the environment by increasing criminal penalties for these actions.

Our members recognize that the industry is a target for both criminals and nation states who are working to steal intellectual property, disrupt operations and undermine our economy. They take these threats very seriously and continue to prioritize the protection of their assets from both physical and cyber-attacks. Companies in the oil and natural gas industry have made and continue to make considerable investments in defending their networks, bolstering their cyber security defenses, and participating in organizations and partnerships where they can share and receive threat information. Specifically, governing boards are making important investments in time, people and resources to defend themselves, so they can continue to deliver the products Americans rely on every day. While threats continue to evolve, so do industry's defenses, by working with government partners, including TSA, DHS, FBI, DOE and others to understand the threat. We believe the industry's record of delivering products safely and efficiently is indicative of the actions our members take to protect themselves in the face of very real and serious threats.

Current Criminal Liability Standard for Pipeline Operators is Sufficient.

API recognizes intentional violations should not be condoned but applying the legal standard of recklessness to pipeline regulation could potentially hurt pipeline safety. Current pipeline safety law, regulation and operator inspection and maintenance programs encourage operators to assess the risks of their pipeline systems. Operators then perform preventive maintenance based on a prioritization of risk. A system that makes operators potentially criminally liable for knowing the risks of their pipeline systems would discourage pipeline risk assessment and diminish preventive maintenance based on risk, both resulting in decreases to pipeline safety. As such API does not feel it is necessary to raise civil penalties as proposed in Section 8 of the 2019 Act.

Civil Penalty Limits in the Pipeline Safety Act are Appropriate

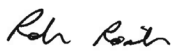
Pipeline operators are committed to zero accidents which means going above and beyond regulation through incorporation of leading practices when rules cannot evolve with changing circumstances or technology and be cost justified in dealing with the increasingly familiar low probability, high consequence accident. Pipeline operators are aware that a pipeline release or incident not only poses a potential health/safety risk to the public and the environment, but that it can also significantly disrupt vital energy supplies that so many Americans depend on in their daily lives. As such, pipeline and terminal operators are self-motivated to provide safe and regulatory compliant operations, delivering petroleum products and transportation services in a manner that protects and preserves the environment around our assets.

Civil penalties are designed to deter intentional non-compliance and, while an important part of a safety regulators tool set, are not the driving force. High civil penalties can encourage fear of disclosure in advance of litigation phases of these lawsuits. This works in opposition to sharing of "lessons learned" information to help other operators avoid similar events. Lessons learned and lessons shared are valued components of industry trade associations. Monetary penalties from litigation, loss of service, contractual failings, etc., nearly always extract a higher penalty than the civil penalty assessed.

Additionally, PHMSA is assessing corrective action orders that legally compel an operator to quickly determine an accident's root cause, and systematically look beyond the accident site to determine whether the threat has been eliminated from the operator's pipeline system. More importantly in addressing safety conditions arising from an accident these orders are providing immediate benefit to stakeholders along the pipeline. Civil penalty costs incurred by a pipeline operator go solely into the general treasury and are not applied in any way toward improving pipeline safety.

In conclusion, safety of the public and the environment is our industry's top priority, and collaboration with PHMSA, DHS, and other government agencies only strengthens our ability to transport our products across America with the fewest possible number of incidents. We are committed to promoting safety in all of our operations, helping to ensure that American families and businesses can efficiently access affordable and reliable energy. Thank you for the opportunity to submit comments and we look forward continuing our engagement with the committee to address pipeline safety.

Sincerely,



Robin Rorick
Vice President, Midstream & Industry Operations
American Petroleum Institute

June 18, 2019

The Honorable Frank Pallone, Jr.
Chairman, Energy and Commerce Committee
U.S. House of Representatives
2107 Rayburn HOB
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The Honorable Bobby L. Rush
Chairman, Subcommittee on Energy, Energy and Commerce Committee
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The Honorable Greg Walden
Ranking Member, Energy and Commerce Committee
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The Honorable Fred Upton
Ranking Member, Subcommittee on Energy, Energy and Commerce Committee
U.S. House of Representatives
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Re: The Safer Pipelines Act of 2019

Dear Chairman Pallone, Chairman Rush, Ranking Member Walden, and Ranking Member Upton,

On June 19, 2019, the U.S. House Representatives, Energy and Commerce Committee, Subcommittee on Energy, will be holding a hearing to discuss draft legislation for reauthorizing the Pipeline Safety Act. The draft legislation, the Safer Pipelines Act of 2019 (2019 Act), would amend certain provisions in the Pipeline Safety Laws for gathering lines.[1] Specifically, Section 3 of the 2019 Act would amend the definitions of "transporting gas" and "transporting hazardous liquid" by eliminating certain limitations on the Pipeline and Hazardous Materials Safety

[1] Safer Pipelines Act of 2019, § 3 (discussion draft).

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Administration's (PHMSA or the Agency) authority to regulate rural gathering lines.[2] Section 3 would also define all gathering lines that operate at a pressure greater than 20 percent of specified minimum yield strength (SMYS) as regulated gathering lines for purposes of PHMSA's pipeline safety standards.[3]

As the nation's leading trade organization for the gathering industry, GPA Midstream Association (GPA Midstream)[4] is strongly opposed to the proposed amendments in Section 3 of the 2019 Act. The amendments would alter longstanding procedural protections that limit PHMSA's jurisdiction over rural gathering lines, override a multi-year effort by PHMSA and other interested stakeholders to establish new, risk-based regulations for rural gathering lines, and impose billions of dollars in unnecessary compliance costs on the gathering industry—costs that would be disproportionately born by small companies that operate some of the lowest risk pipelines in the United States. Accordingly, GPA Midstream is respectfully requesting that Section 3 be eliminated from the Safer Pipelines Act of 2019 in its entirety.

I. Background

In the Natural Gas Pipeline Safety Act of 1968 (1968 Act), Congress provided PHMSA with the authority to prescribe minimum federal safety standards for the transportation of gas by pipeline.[5] The 1968 Act defined "transportation of gas" to include "the gathering, transmission, distribution of gas by pipeline or its storage in or affecting interstate or foreign commerce[,]" but specifically excluded "the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, a community development, or any similar populated area which the Secretary may define as a nonrural area[.]"[6] The legislative history indicates that Congress excluded rural gas gathering lines from PHMSA's jurisdiction in the 1968 Act because the "impressive" safety record of these lines did not support the need for federal regulation.[7]

Eleven years later, in the Hazardous Liquid Pipeline Safety Act of 1979 (1979 Act), Congress added a similar prohibition in providing PHMSA with the authority to prescribe

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[2] *Id.*
[3] *Id.*
[4] GPA Midstream is composed of nearly 80 corporate members that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as "midstream activities." Such processing includes the removal of impurities from the raw gas stream produced at the wellhead as well as the extraction for sale of natural gas liquid products (NGLs) such as ethane, propane, butane, and natural gasoline or in the manufacture, transportation, or further processing of liquid products from natural gas. GPA Midstream membership accounts for more than 90% of the NGLs produced in the United States from natural gas processing. Additional information about GPA Midstream is available at https://gpaglobal.org/. Prior to April 2016, GPA Midstream was known as the Gas Processors Association.
[5] Pub. L. No. 90-481, 82 Stat. 720. PHMSA is the agency within the U.S. Department of Transportation (DOT) currently responsible for administering the Pipeline Safety Laws and Regulations. For ease of reference, PHMSA is used throughout this letter to refer to the various DOT agencies that have acted in that capacity since the passage of the 1968 Act.
[6] *Id.* § 2(3), 82 Stat. at 720.
[7] H.R. Rep. No. 90-1390 (1968), *reprinted in* 1968 U.S.C.C.A.N. 3223, 3234-35.

minimum safety standards for the transportation of hazardous liquids by pipeline.[8] The 1979 Act defined "transportation of hazardous liquids" as "the movement of hazardous liquids by pipeline, or their storage incidental to such movement, in or affecting interstate or foreign commerce; except that it shall not include any such movement through gathering lines in rural locations[.]"[9] As in the 1968 Act, the legislative history for the 1979 Act indicates that Congress excluded rural hazardous liquid gathering lines from PHMSA's jurisdiction because the lines "present[ed] insufficient risk to life and property to require regulation."[10]

Thirteen years later, in the Pipeline Safety Act of 1992 (1992 Act), Congress amended the jurisdictional limitations in the 1968 and 1979 Acts to provide PHMSA with the authority to regulate rural gathering lines, provided the Agency satisfied certain procedural requirements.[11] Specifically, the 1992 Act directed PHMSA to issue regulations defining the term "gathering line" and, in the case of gas gathering lines, to consider the "functional and operational characteristics" of these lines in establishing that definition.[12] The 1992 Act also directed PHMSA to issue regulations establishing minimum federal safety standards for a subset of so-called "regulated gathering line[s]."[13] In deciding on "the types of the lines which are functionally gathering but which, due to specific physical characteristics, warrant regulation[,]" the 1992 Act instructed PHMSA to "consider such factors as location, length of line from the well site, operating pressure, throughput, and the composition of the transported gas" or hazardous liquid, as appropriate.[14] The 1992 Act also prohibited PHMSA from regulating "crude oil gathering lines that are of a nominal diameter of 6 inches or less, are operated at low pressure, and are located in rural areas that are not unusually sensitive to environmental damage."[15]

In 2006, PHMSA satisfied part of the 1992 Act's rulemaking mandate by establishing new safety standards for gas gathering lines.[16] Those safety standards, which remain in effect, require operators to use the definition in American Petroleum Institute (API) Recommended Practice 80, Guidelines for the Definition of Onshore Gas Gathering Lines (1st ed., April 2000) to determine if a pipeline is an "onshore gathering line", subject to certain additional regulatory limitations.[17] If a pipeline meets the definition of an onshore gas gathering line, the safety standards require operators to determine if the line qualifies as a "regulated gathering line." PHMSA recognizes two categories of regulated onshore gas gathering lines: (1) Type A gathering lines, which are higher stress pipelines that pass through more populated areas,[18] and (2) Type B gathering lines,

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[8] Hazardous Liquid Pipeline Safety Act of 1979, Title II of Pub. L. No. 96-129, § 202(3), 93 Stat. 1003, 1003 (1979).
[9] *Id.*
[10] S. Rep. No. 96-182 (1979), *reprinted in* 1979 U.S.C.C.A.N. 1971, 1988.
[11] Pub. L. No. 102-508, 106 Stat. 3289.
[12] *Id.* § 109(a), 106 Stat. at 3295.
[13] *Id.*
[14] *Id.*
[15] *Id.* § 208, 106 Stat. at 3304.
[16] 49 C.F.R. §§ 192.8 to 192.9 (2018). A gathering line is generally defined in Part 192 as a "pipeline that transports gas from a current production facility to a transmission line or main." *Id.* § 192.3.
[17] *Id.* § 192.8(a).
[18] *Id.* § 192.8(b) (table).

which are lower stress pipelines that pass through more populated areas.[19] Different risk-based safety standards, drawn primarily from the requirements for gas transmission lines, apply to Type A and Type B gathering lines.[20]

In 2008, PHMSA satisfied the remainder of the 1992 Act's rulemaking mandate by establishing new safety standard for hazardous liquid gathering lines.[21] Those safety standards, which also remain in effect, define "a regulated rural gathering line" as a petroleum gathering line in a rural area that satisfies a three-part test that is based on the pipeline's outside diameter, proximity to unusually sensitive areas, and operating pressure.[22] As with regulated gas gathering lines, operators of regulated rural petroleum gathering lines must comply with a series of risk-based safety standards.[23]

PHMSA recently initiated two separate rulemaking proceedings to consider potential changes to the safety standards for gas and hazardous liquid gathering lines. In the first proceeding, initiated in 2010, PHMSA is recommending that operators comply with certain reporting requirements to determine if additional regulations are necessary for hazardous liquid gathering lines in rural areas.[24] PHMSA expects to issue a final rule in this proceeding in the coming months.[25]

In the second proceeding, initiated in 2011, PHMSA is recommending that operators of certain larger-diameter, high stress rural gas gathering lines comply with the safety standards for Type B gathering lines and the emergency response plan requirements.[26] PHMSA is also recommending that operators of unregulated rural gas gathering lines provide additional information to the Agency by complying with certain reporting requirements.[27] PHMSA expects to issue a final rule in this proceeding next year.[28]

II. Analysis

Section 3 of the 2019 Act would amend the definitions of "transporting gas" and "transporting hazardous liquid" in the Pipeline Safety Laws by repealing provisions that limit PHMSA's jurisdiction over rural gathering lines.[29] Specifically, Section 3 would strike the

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[19] *Id.*
[20] *Compare Id.* § 192.9(c) with *Id.* § 192.9(d).
[21] Pipeline Safety: Protecting Unusually Sensitive Areas From Rural Onshore Hazardous Liquid Gathering Lines and Low-Stress Lines, 73 Fed. Reg. 31,634 (June 3, 2008).
[22] *Id.* at 31,644-645.
[23] 49 C.F.R. § 195.11.
[24] Pipeline Safety: Safety of Hazardous Liquid Pipelines, 80 Fed. Reg. 61,610, 61,611-612 (Oct. 13, 2015).
[25] *See* Dep't of Transp., Report on DOT Significant Rulemakings, https://www.transportation.gov/regulations/report-on-significant-rulemakings (last updated May 1, 2019) (providing that the final rule is anticipated to be published in June 2019). The final rule is currently under review by the Office of Management and Budget. Office of Mgmt. and Budget, List of Regulatory Actions Currently Under Review, https://www.reginfo.gov/public/jsp/EO/eoDashboard.myjsp (last visited June 17, 2019).
[26] Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. 20,722, 20,808 (Apr. 8, 2016).
[27] *Id.* at 20,806.
[28] *See* Dep't of Transp., Report on DOT Significant Rulemakings, https://www.transportation.gov/regulations/report-on-significant-rulemakings (last updated May 1, 2019) (providing that the final rule is anticipated to be published in June 2020).
[29] Safer Pipelines Act of 2019, § 3 (discussion draft).

language that limits PHMSA's authority only to rural gathering lines that the Agency determines meet the statutory criteria necessary to warrant regulation in a rulemaking proceeding.[30] In other words, Section 3 completely removes the procedural protections that Congress has afforded to these low risk pipelines for more than two decades.

Section 3 of the 2019 Act would also amend the rulemaking provision from the 1992 Act by making all gathering lines that operate at a stress level greater than 20 percent of SMYS regulated gathering lines for purposes of PHMSA's regulations.[31] That amendment, which does not consider a pipeline's diameter, proximity to populated or environmentally sensitive areas, or any other criteria, would have the effect of requiring operators of all higher stress, rural gas gathering lines to comply with PHMSA's safety standards and reporting requirements for Type A lines, and operators of all higher stress, rural hazardous liquid gathering lines to comply with PHMSA safety standards and reporting requirements for regulated rural petroleum gathering lines.

GPA Midstream is strongly opposed to Section 3 of the 2019 Act. The legislative and regulatory history demonstrates that the proposed amendments to the definitions and rulemaking requirements for gathering lines are not necessary. The proposed amendments would also undo nearly a decade's worth of work by the regulated community in examining whether to establish additional safety standards and reporting requirements for rural gathering lines. Finally, the proposed amendments would impose billions of dollars of unnecessary compliance costs on the gathering industry, and those costs would be disproportionately born by small companies that operate some of the lowest risk pipelines in the nation.

a. The legislative and regulatory history demonstrate that the amendments proposed in Section 3 of the 2019 Act are not necessary.

Congress has always considered rural gathering lines to present a very low risk to public safety. Indeed, at the time of the 1968 and 1979 Acts, Congress found that the risk was so low that PHMSA should not have the authority to regulate rural gathering lines.[32] Congress did not overrule these earlier findings in the 1992 Act.[33] Rather, Congress asked PHMSA to determine if rural gathering lines presented enough risk to warrant federal regulation.[34]

The Agency satisfied the rulemaking mandates in the 1992 Act several years ago and is in the process of revisiting the safety standards and reporting requirements for rural gathering lines to account for recent developments in the oil and gas industry, particularly the expansion of pipeline infrastructure in the nation's shale plays. PHMSA expects to complete that process and issue new rules in the very near future.[35] Far from demonstrating that Section 3 of the 2019 Act

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[30] *Id.*
[31] *Id.*
[32] H.R. Rep. No. 90-1390 (1968), *reprinted in* 1968 U.S.C.C.A.N. 3223, 3234-35; S. Rep. No. 96-182 (1979), *reprinted in* 1979 U.S.C.C.A.N. 1971, 1988.
[33] Pipeline Safety Act of 1992 § 109, 106 Stat. at 3294-95.
[34] *Id.*
[35] *See* Dep't of Trans., Report on DOT Significant Rulemakings, https://www.transportation.gov/regulations/report-on-significant-rulemakings (last updated May 1, 2019) (providing that the final rule for liquid gathering lines is anticipated to be published in June 2019 and gas gathering lines is anticipated to be published in June 2020).

is needed, the facts show that the current statutory provisions are continuing to serve important public policy objectives, and that the Agency is discharging its obligation in a manner consistent with the intent of Congress.

b. Section 3 of the 2019 Act would undo nearly a decade's worth of work by the regulated community to establish new reporting requirements and safety standards for rural gathering lines.

PHMSA, the pipeline industry, and other interested stakeholders have been examining the need to establish new safety standards and reporting requirements for rural gathering lines for nearly a decade. After considering the information submitted in response to a 2010 request for public comment, in 2015, the Agency proposed to extend the reporting requirements for hazardous liquid pipelines to rural gathering lines.[36] The Liquid Pipeline Advisory Committee, the federal advisory committee responsible for reviewing proposed changes to the hazardous liquid pipeline safety regulations, voted in favor of that proposal in 2016.[37] PHMSA has indicated that it expects to issue a final rule in that proceeding later this year.[38]

Similarly, after considering the information submitted in response to a 2011 request for public comment, the Agency proposed new safety standards and reporting requirements for rural gas gathering lines in 2016.[39] The Gas Pipeline Advisory Committee, the federal advisory committee that reviews proposed changes to the gas pipeline safety regulations, is scheduled to consider that proposal later this month.[40] PHMSA expects to issue a final rule in that proceeding next year.[41]

Like hundreds of other interested stakeholders, GPA Midstream has been actively engaged in both proceedings and hopes that the Agency finishes the rulemaking process as soon as possible. Section 3 of the 2019 Act would override this multi-year rulemaking effort and unnecessarily treat rural gathering lines the same as other pipelines that present a much greater risk to public safety.

c. Section 3 of the 2019 Act would impose billions of dollars in unnecessary compliance costs on the gathering industry, and those costs would be disproportionately born by small operators.

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[36] Pipeline Safety: Safety of Hazardous Liquid Pipelines, 80 Fed. Reg. at 61,611-612.
[37] Transcript, PHMSA Liquid Pipeline Advisory Committee 107:4 – 113:1 (Feb. 1, 2016).
[38] *See* Dep't of Trans., Report on DOT Significant Rulemakings, https://www.transportation.gov/regulations/report-on-significant-rulemakings (last updated May 1, 2019) (providing that the final rule is anticipated to be published in June 2019). The final rule is currently under review by the Office of Management and Budget. Office of Mgmt. and Budget, List of Regulatory Actions Currently Under Review, https://www.reginfo.gov/public/jsp/EO/eoDashboard.myjsp (last visited June 17, 2019).
[39] Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. 20,722 (Apr. 8, 2016).
[40] PHMSA Public Meetings and Documents, Gas Pipeline Advisory Committee, https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=143 (last visited June 17, 2019) (The meeting is scheduled for June 25 and 26, 2019, at the Department of Transportation Headquarters in Washington D.C.).
[41] *See* Dep't of Trans., Report on DOT Significant Rulemakings, https://www.transportation.gov/regulations/report-on-significant-rulemakings (last updated May 1, 2019) (providing that the final rule is anticipated to be published in June 2020).

In 2016, PHMSA proposed to apply certain safety standards to a subset of the rural gas gathering lines covered under Section 3 of the 2019 Act, *i.e.*, gas gathering lines in Class 1 locations 8 inches or greater in diameter with a maximum allowable operating pressure that produces a hoop stress of 20 percent or more of SMYS for metallic lines or more than 125 PSIG for non-metallic lines.[42] PHMSA also proposed to extend the reporting to all rural gathering lines, whether regulated or not.[43]

Given the significance of the proposed changes, API asked a third-party to prepare a cost-benefit analysis. That analysis found that the Agency's proposed rule would impose nearly $30 billion in costs on the gas gathering industry during the initial 15-year compliance period, and that those costs would be disproportionately born by small operators, consuming approximately 90 percent of the annual revenue generated by these companies.[44]

Although PHMSA is no longer recommending that the proposed safety standards apply to rural gas gathering lines 12 inches or less in diameter and wants to limit the reporting requirements for unregulated rural gas gathering lines,[45] Section 3 of the 2019 Act does not draw these distinctions. All rural gas gathering lines that operate at a pressure greater than 20 percent of SMYS would be regulated, presumably in accordance with the requirements for higher stress, Type A gathering lines, and the regulations would apply without regard to diameter or any other risk factor. The potential cost of complying with these regulations would be enormous for the gas gathering industry and far exceed API's initial $30 billion estimate, which did not even consider the economic impact of regulating rural gas gathering lines less than 8 inches in diameter.[46]

The potential costs that Section 3 of the 2019 Act would impose on hazardous liquid pipeline operators cannot be estimated with any reasonable degree of certainty at this time. PHMSA only recently proposed to collect additional data to determine if the safety standards for rural gathering lines need to be changed.[47] Until that data is collected and analyzed, a reasonable estimate of the costs associated with treating all high stress hazardous liquid gathering lines in rural areas as regulated cannot be provided.

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[42] Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. at 20,808.
[43] *Id.* at 20,806.
[44] ICF International, Cost and Benefit Impact Analysis of the PHMSA Natural Gas Gathering and Transmission Safety Regulation Proposal at 3, 69 (July 1, 2016), https://www.regulations.gov/document?D=PHMSA-2011-0023-0381.
[45] PHMSA, Power Point Presentation: Safety of Gas Gathering Presentations, 6 (Jan. 21, 2019), https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=143.
[46] According to PHMSA's latest estimate, there are 97,342 miles of high-stress rural gas gathering lines that are 8 inches or greater in diameter, all of which would become regulated under Section 3 of the 2019 Act. *Id.* at 14. Although there is no PHMSA estimate available at this time, thousands of additional miles of high-stress rural gathering lines that are less than 8 inches in diameter would also become regulated.
[47] Pipeline Safety: Safety of Hazardous Liquid Pipelines, 80 Fed. Reg. at 61,611-612.

III. Conclusion

For the reasons provided in this letter, GPA Midstream is strongly opposed to Section 3 of the 2019 Act. If you have questions, please contact me at (202) 279-1664 or by email at mhite@GPAglobal.org.

Sincerely,

Matthew Hite
Vice President of Government Affairs
GPA Midstream Association

June 18, 2019

The Honorable Bobby Rush
Chairman
Subcommittee on Energy
U.S. House of Representatives
2188 Rayburn House Office Building
Washington, DC 20515

The Honorable Fred Upton
Ranking Member
Subcommittee on Energy
U.S House of Representatives
2183 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Rush and Ranking Member Upton,

We encourage Congress to reauthorize Pipelines and Hazardous Materials Safety Administration's (PHMSA) legislative proposals to enact its pipeline safety program, a key component to ensuring safety for operators, workers and communities near pipelines.

Pipelines are the safest way to transport the energy Americans use every day, and it is imperative that the builders, owners and operators of pipeline infrastructure, as well as the regulatory environment and PHMSA, be well positioned to meet current and future safety challenges. PHMSA's proposals will help ensure that all parties can continue to safeguard pipelines and protect the dedicated trade workers building and maintaining our pipeline infrastructure, as well as the surrounding communities, first responders and the environment.

The shared goal of safety between regulators, pipeline builders and operators, and the public, means that Americans don't have to choose between safe, affordable energy and protecting the environment. Pipelines have proven to be the safest method of transporting energy because the owners, operators and builders of pipelines and pipeline infrastructure are committed to a deep-rooted culture of safety and ever-advancing technologies.

America's pipeline operators utilize many techniques to enhance efficiency and safety in their operations including state-of-the-art 24/7 control room monitoring, collecting and analyzing thousands of data points and allowing engineers to constantly assess pipeline operations. They can adjust flow in real time, either quickly adjusting or completely stopping to maintain safety, and conduct high-tech inspections using tools like smart pigs, drones and sensitive acoustic devices to collect data on the health of a pipeline. In addition to the cutting-edge technologies and digital solutions used to efficiently deliver energy to U.S. consumers while supporting workplace safety and infrastructure integrity, the industry spends more than $2 billion annually to evaluate, inspect and maintain pipelines.

Operators also utilize a series of Recommended Practices and safety standards for operational safety measures, including API RP 1173, on pipeline safety management systems, which provide a comprehensive framework and defines the elements needed to identify and address safety for a pipeline's lifecycle.

Building upon these safety measures implemented by pipeline operators, the PHMSA pipeline safety reauthorization provides mechanisms for ensuring the security of facilities, employees and builders by deterring those who hope to interrupt America's flow of energy and create a safety risk to surrounding

communities, first responders and the environment. These mechanisms include, but are not limited to, the increase of criminal penalties for these actions.

However, while current Federal Statute 49 USC §60123 prohibits damaging or destroying interstate pipeline infrastructure, it fails to address changing tactics that could be equally as dangerous to the assailants, public safety, the environment and the American trade workers dedicated to safely building and maintaining our nation's pipelines. Under §60123, the conduct making the action illegal must include "damaging" or "destroying" the interstate pipeline facility, and is commonly defined respectively as causing physical harm to something in such a way as to impair its value, usefulness or normal function and damaging something so badly that it cannot be repaired.

Several recent attacks against interstate pipelines have focused on the turning of pipeline valves. While these attacks neither damaged nor destroyed the facilities, the valve turnings nevertheless pose a dangerous threat to public safety. If closed improperly, valves can cause a pressure surge and potentially result in a rupture and release. Fortunately, no releases resulted from the 2016, 2017 or 2019 attacks on pipeline valves. However, the U.S. Government Accountability Office (GAO) confirmed the risk of rupture from improper valve operation in a Congressionally mandated 2013 report.

Furthermore, pipeline operators have documented nine pipeline incidents from conditions similar to an improper valve closure. One of these incidents resulted in a 1,000-barrel release of diesel, and another led to a nearly 4,000-barrel release of natural gas liquids. A crude oil pipeline release of this magnitude could cause serious harm to the assailants as well as the environment and members of the surrounding area – including the trade workers and their families who live in these communities.

Several other recent attacks, which did cause physical damage to pipelines, occurred at locations where the pipeline was still under construction and not yet operating as an interstate pipeline. These attacks would not currently be covered under §60123.

State legislatures are acting to close gaps in their statutes protecting pipelines and infrastructure. States are extending criminal penalties to tampering with, impeding or inhibiting the operation of pipeline infrastructure. For the safety of American families, the environment and the skilled trade workers dedicated to safely building and maintaining our pipeline infrastructure, Congress should prioritize closing the same loopholes in federal law.

Pipeline infrastructure is instrumental in delivering clean, affordable and reliable energy to U.S. consumers and communities. We applaud PHMSA for their continued commitment to protecting pipelines, and encourage Congress to reauthorize this important safety program.

Sincerely,

International Union of Operating Engineers

Laborers' International Union of North America

North America's Building Trades Unions

United Association of Plumbers and Pipefitters

Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2019
Section-by-Section Analysis

SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 49, UNITED STATES CODE; TABLE OF CONTENTS.

This section provides that the Act may be cited as the "Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2019," references Title 49, United States Code, and provides a table of contents.

SECTION 2. AUTHORIZATION OF APPROPRIATIONS.

The pipeline safety program is currently authorized through the end of fiscal year 2019. This section reauthorizes the pipeline safety program for four fiscal years, from 2020 through 2023. It includes extension of the state pipeline safety program grants, research and development awards, "one call" state damage prevention grants, emergency response grants, pipeline safety information grants to communities, and underground natural gas storage grants over that period. The cost for the pipeline safety program continues to be funded through user fees assessed to operators of pipelines, LNG facilities, and underground gas storage facilities, as well as a contribution from the Oil Spill Liability Trust Fund and reimbursement for design reviews.

SECTION 3. SAFETY INCENTIVES PROGRAM.

While setting minimum safety standards is a key part of ensuring pipeline safety, experience has shown the importance of each operator fostering a safety culture that embraces best practices that can exceed the minimum requirements. This section authorizes PHMSA to evaluate and implement potential programs that enhance pipeline safety performance by providing recognition or other non-financial incentives for pipeline operators who voluntarily exceed the minimum federal pipeline safety regulations to ensure operating safety and reliability. PHMSA may also consider incentives programs for state authorities certified under section 60105 of title 49 for intrastate pipeline safety oversight.

SECTION 4. PIPELINE CONSTRUCTION PROJECT DATA COLLECTION.

PHMSA often receives inquiries from stakeholders, including lawmakers and the public, concerning the progress of pipeline construction projects. This section would enhance PHMSA's situational awareness and response to these inquiries by authorizing the collection of information on pipeline construction projects, including by requiring operators to report any construction shut downs, and thereby allowing PHMSA to take timely action regarding safety matters as appropriate.

SECTION 5. VOLUNTARY INFORMATION SHARING SYSTEM.

The sharing of information and lessons learned from risk assessments among operators is a key part of advancing pipeline safety and promoting a systems approach to safety. Section 10 of the PIPES Act of 2016 established a working group to consider the development of a voluntary information sharing system to encourage collaborative efforts to improve inspection information feedback and information sharing, with the purpose of improving natural gas transmission and hazardous liquid pipeline safety. The system would include pipeline integrity risk analysis information and may include other information relating to reducing pipeline incidents such as lessons learned from accidents and near misses, process improvements, technology deployments, and other voluntary information sharing systems. As a follow-on from the recommendations of the working group, this section authorizes PHMSA to establish a voluntary information sharing system to encourage collaborative efforts to improve inspection information feedback and information sharing, with the purpose of improving natural gas transmission and hazardous liquid pipeline integrity risk analysis. To encourage participation, the provision ensures that operators can provide the information in a confidential manner, without exposure to punitive measures.

SECTION 6. PIPELINE SAFETY PILOT PROGRAMS.

This section grants the Secretary the authority to conduct pilot programs to promote the efficient, safe, and secure transportation of gas or hazardous liquids by pipeline. PHMSA operates in a dynamic and challenging environment. The new authority to conduct pilot programs will allow PHMSA the flexibility to accomplish its safety mission and goals by limiting risk when evaluating the feasibility and effectiveness of new technologies or processes that may become available to address the safety risks inherent in the transportation of energy products. To the extent that a pilot program involves an exemption from a regulation that would apply to a state-regulated pipeline, enforcement of that provision by a state authority against the person covered by the exemption or participating in the pilot program is preempted.

SECTION 7. STATE PIPELINE SAFETY PROGRAM GRANTS.

The Secretary awards annual pipeline safety program grants to states not to exceed 80 percent of the cost of the personnel, equipment, and activities the state reasonably requires to carry out its pipeline safety program. This section provides that the Secretary may consider, as part of those costs of personnel, equipment, and activities, expenses incurred by a state rendering aid to another state with pipeline inspection or program assistance in the aftermath of a natural disaster or major pipeline incident.

SECTION 8. PROPERTY DAMAGE THRESHOLD.

This provision will update the property damage threshold for operator incident reporting and account for inflation changes within 18 months of passage of the bill. This amount is currently at $50,000 and has not been updated in many years. Under these provisions, the

new threshold would be $100,000 and would be updated biennially to account for changes in inflation. The new incident reporting threshold would apply to both gas and hazardous liquid pipeline facilities and would be applicable to both telephonic and written incident reports.

SECTION 9. INACTIVE PIPELINES.

In order to provide more flexibility to pipeline operators and ensure the safety of inactive pipelines, this section requires the Secretary to publish regulations setting forth the applicability of the pipeline safety requirements to each of four operating status categories: pre-commissioned, active/in service, inactive/out of service, and abandoned. The applicability of the regulations will be based on the commensurate risk that the pipeline status poses to the public, property, and the environment, and may include requirements to move from one operational status category to another if appropriate.

SECTION 10. PUBLIC AWARENESS AND COOPERATIVE ACTIVITIES.

While PHMSA does not issue any permits needed to construct a pipeline or liquefied natural gas facility, many federal, state, and local agencies that are responsible for doing so lack expertise in pipeline systems, which can lead to construction permitting delays. This section enhances PHMSA's role in participating in public meetings, and other proceedings conducted by state and federal permitting authorities having responsibility for energy infrastructure project approvals, to better educate the public on how safety oversight will be conducted on the pipeline once operation begins. It also authorizes PHMSA to engage in other activities to liaise with state and local officials on pipeline projects and consult on the applicable standards that will advance the safe and efficient transportation of energy and other products by pipeline and advance the reliability and resilience of the Nation's pipeline infrastructure. In addition, this amendment will clarify the agency's authority to use non-regulatory methods such as public service announcements for encouraging safe practices and general awareness of the need for pipeline safety.

SECTION 11. LIQUEFIED NATURAL GAS FACILITY PROJECT REVIEWS.

In order to promote better coordination between PHMSA and others, including FERC, other federal agencies, and states, on LNG project reviews, this section clarifies how the LNG facility design standards in C.F.R. Part 193 are used by permitting agencies such as FERC, which may seek opinions from PHMSA on whether a given project plan would meet the standards, while maintaining that FERC or the other permitting agency remains responsible for formal project approvals and permits. Under Title 49, and the August 31, 2018 MOU with FERC, DOT has exclusive authority to determine whether the design, construction and operation of LNG and related pipeline facilities are compliant with federal safety standards. In the context of FERC NGA Section 3 approvals, FERC makes the final decision regarding whether a permit should issue. Accordingly, DOT's letter of determination is conditional, and not a final determination as to whether a permit will be

issued, potentially with added conditions related to the siting and location of the facility. Therefore, these letters of determination are not final agency actions.

SECTION 12. COST RECOVERY AND FEES FOR FACILITY REVIEWS.

At the request of the Federal Energy Regulatory Commission (FERC) or other agency responsible for issuing permits needed to construct or expand a pipeline or LNG facility, PHMSA incurs substantial resource burdens in performing technical reviews to determine whether the project would conform with applicable design, materials, and construction safety standards. While PHMSA was provided with authority to collect fees from project applicants to offset these costs, under current law the threshold for using this authority is $2.5 billion, which leaves out all but the largest projects. This section changes the threshold for PHMSA to recover costs it incurs in conducting project design reviews to $250 million. It also makes a technical amendment to ensure collected funds can be used to offset costs associated with design review activities in a fiscal year other than the year of collection without further appropriation.

The proposal also allows PHMSA to collect in advance, from the applicant, a fee for the cost to conduct a review to determine compliance with part 193, Subpart B, of title 49, Code of Federal Regulations, of an application to FERC for a liquefied natural gas facility. The Secretary of Transportation will prescribe how the fee is assessed and collected. Upon collection, the fee will be deposited into a Liquefied Natural Gas Siting Account within the Pipeline Safety fund to assure the applicant that its advance is applied to the cost of the review.

The Statutory Pay-As-You-Go Act of 2010 provides that revenue and direct spending legislation cannot, in the aggregate, increase the on-budget deficit. If such legislation increases the on-budget deficit and that increase is not offset by the end of the Congressional session, a sequestration must be ordered. This proposal would affect direct spending and revenues, but the effects of this proposal would net to zero; therefore, it is in compliance with the Statutory PAYGO Act. (A table describing the effect of this bill on the deficit is included with this proposal.)

SECTION 13. PERMITS FOR PIPELINES ISSUED BY OTHER AGENCIES.

This section confirms that the Secretary has the exclusive authority under Chapter 601 to prescribe Federal requirements for pipeline safety, including through pipeline safety conditions contained in permits issued by other Federal agencies. In addition, the provision states that other Federal agencies, with the exception of the Federal Energy Regulatory Commission, may not impose requirements that vary from the Federal Pipeline Safety regulations on any pipeline with respect to permitting. Specifically, this section is not intended to supersede EPA or State Implementation Plan authority over emissions criteria or related CWA/CAA compliance determinations. This provision does not intend to affect determinations of other agencies concerning permits or authorizations, including NEPA compliance. This section confirms that any variance from DOT standards governing design, construction and operation of pipeline facilities

must be sanctioned by the Secretary. As a cooperating agency in most permitting matters involving pipelines, any necessary conditions relating to pipeline safety can be raised with the Secretary (and approved, if necessary).

SECTION 14. OVERPRESSURE PROTECTION.

Overpressure events, including those that may occur in connection with pipe repair and replacement projects, are a serious threat to pipeline safety and can adversely impact pipeline integrity. This section requires operators of gas distribution pipeline facilities to provide a secondary or back-up means of overpressure protection for regulator stations serving low pressure distribution systems and that employ the primary and monitor regulator design. The back-up protection must be capable of either shutting the flow of gas or providing a device fully capable of relieving gas to atmosphere to fully protect the distribution system from over-pressurization events.

SECTION 15. MANAGEMENT OF CHANGE.

Pipeline repair, replacement, and construction projects often involve a tie-in to an existing pressurized pipeline. Inadequate procedures for monitoring and controlling the energy products being transported can increase the risk of serious accidents. This section directs PHMSA, consistent with authority already granted under existing law, to issue regulations requiring all pipeline operators to prepare and implement a detailed set of energy control procedures to use when performing pipeline tie-in operations. The procedures must, at a minimum, address management of change for varying field conditions, and provide a means to actively monitor pressures and safely control gas and hazardous liquid sources at all times before, during and after such operations.

SECTION 16. OPERATOR QUALIFICATION.

Under existing regulations, operator qualification requirements apply to operations and maintenance tasks, but not to construction tasks. Experience has shown the importance of ensuring that individuals performing pipeline construction tasks are appropriately qualified. This section directs PHMSA to issue regulations extending operator qualification regulations to new construction for gas and hazardous liquids pipelines. At the same time, burdensome and obsolete reporting requirements need to be eliminated to ensure efficiency. Unlike other types of written maintenance and operating procedures, there is an obsolete requirement in current law to submit each change in operator qualification procedures to PHMSA. This section repeals this unnecessary statutory reporting burden. Reporting to PHMSA is not needed, since PHMSA is able to review all changes to all types of written procedures during inspections and audits in accordance with the applicable regulations.

SECTION 17. TIMELY INCORPORATION BY REFERENCE.

This section requires PHMSA to periodically review and update its regulations to incorporate the industry standards that have been adopted, in whole or in part, in the gas

and hazardous liquid pipeline safety regulations as necessary and appropriate. In addition, the bill would require PHMSA to review any new industry standards relating to pipeline safety proposed to be incorporated by reference through a petition for rulemaking.

SECTION 18. CRIMINAL PENALTIES.

This provision would strengthen the existing criminal penalty measures for damaging or destroying a pipeline facility. It would specify that vandalism, tampering with, or impeding, disrupting, or inhibiting the operation of a pipeline facility are punishable by criminal fines and imprisonment. It would also specify that pipeline facilities under construction are included within the scope of the damage prohibitions in addition to operational pipeline facilities.

SECTION 19. JOINT INSPECTION AND OVERSIGHT.

PHMSA is responsible for ensuring that when a state takes responsibility for oversight of the intrastate pipelines in that state, such oversight is performed effectively and in accordance with the terms of the federal grants that fund the state programs. This section confirms that a state authority will provide records of any inspection or investigation it conducts under the federal-state pipeline safety programs overseen by PHMSA. A state authority conducting an inspection or investigation of an intrastate pipeline facility must also allow PHMSA to participate in the inspection or investigation upon request.

SECTION 20. UNDERGROUND NATURAL GAS STORAGE USER FEES.

Section 12(c) of the PIPES Act of 2016 (49 U.S.C. 60302) authorized the collection and use of user fees from operators of underground natural gas storage facility operators. This section makes a technical change that allows the collection of an additional 5 percent of the underground natural gas storage appropriation, to conform to pipeline safety user fee collection as established in 49 U.S.C. 60301. Each year, PHMSA would adjust the amount billed to account for the actual fees collected so that this 5 percent does not accumulate.

A BILL

To provide for enhanced safety and reliability in the transportation of the Nation's energy products by pipeline, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 49, UNITED STATES CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2019" or "PIPES Act of 2019".

(b) AMENDMENT OF TITLE 49, UNITED STATES CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

(c) TABLE OF CONTENTS.—

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

(a) GAS AND HAZARDOUS LIQUID.—Section 60125(a) of title 49, United States Code, is amended—

(1) in paragraph (1) by striking subparagraphs (A)−(D) and inserting, in their place, the following:

"(A) for fiscal year 2020, $119,000,000, of which $9,000,000 shall be expended for carrying out such section 12 and $41,274,000 shall be expended for making grants; and

"(B) for fiscal years 2021 through 2023, such sums as may be necessary.";

(2) in paragraph (2) by striking subparagraphs (A)−(D) and inserting in their place the following:

"(A) for fiscal year 2020, $22,000,000 of which $3,000,000 shall be expended for carrying out such section 12 and $8,067,000 shall be expended for making grants; and

"(B) for fiscal years 2021 through 2023, such sums as may be necessary.";

(3) in paragraph (3) by striking "$8,000,000 for each of fiscal years 2017 through 2019" and inserting, in its place, "$8,000,000 for fiscal year 2020 and such sums as may be necessary for fiscal years 2021 through 2023.".

(b) OPERATIONAL EXPENSES.—There are authorized to be appropriated to the Secretary for the necessary operational expenses of the Pipeline and Hazardous Materials Safety Administration the following amounts:

(1) $24,215,000 for fiscal year 2020; and

(2) such sums as may be necessary for fiscal years 2021 through 2023.

(c) EMERGENCY RESPONSE GRANTS.—Section 60125(b)(2) is amended by striking "10,000,000 for each of fiscal years 2012 through 2015" and inserting, in its place,

"$10,000,000 for fiscal year 2020 and such sums as may be necessary for fiscal years 2021 through 2023".

(d) ONE-CALL NOTIFICATION PROGRAMS.—Section 6107 is amended by striking "$1,058,000 for each of fiscal years 2016 through 2019" and inserting, in its place, "$1,058,000 for fiscal year 2020 and such sums as may be necessary for fiscal years 2021 through 2023".

(e) DAMAGE PREVENTION PROGRAMS.—Section 60134(i) is amended by striking "$1,500,000 for each of fiscal years 2012 through 2015" and inserting, in its place, "$1,500,000 for fiscal year 2020 and such sums as may be necessary for fiscal years 2021 through 2023".

(f) PIPELINE SAFETY INFORMATION GRANTS TO COMMUNITIES.—Section 60130(c) is amended by striking "made available under section 2(b) of the PIPES Act of 2016, the Secretary shall expend $1,500,000 for each of fiscal years 2016 through 2019" and inserting, in its place, "made available under section 2(b) of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2019, $1,500,000 is authorized to be appropriated for fiscal year 2020 and such sums as may be necessary for fiscal years 2021 through 2023".

(g) PIPELINE INTEGRITY PROGRAM.—Section 12 of the Pipeline Safety Improvement Act of 2002 is amended in paragraph (f) by striking "fiscal years 2016 through 2019" and inserting, in its place "fiscal years 2020 through 2023".

SEC. 3. SAFETY INCENTIVES PROGRAM.

Section 60117 is amended by adding at the end the following:

"(p) SAFETY INCENTIVES PROGRAM.—The Secretary is authorized to evaluate and implement potential programs that enhance pipeline safety performance by providing recognition or other non-financial incentives for pipeline operators who voluntarily exceed the minimum federal pipeline safety regulations to ensure operating safety and reliability. These incentive programs may also be extended by state authorities certified under section 60105 of this title to operators of intrastate pipeline facilities subject to state oversight.".

SEC. 4. PIPELINE CONSTRUCTION PROJECT DATA COLLECTION.

Section 60108 is amended by adding at the end the following:

"(f) PIPELINE CONSTRUCTION PROJECT DATA COLLECTION.—If the Secretary determines that it would advance the purposes of chapter 601 of this title, the Secretary may require pipeline owners or operators to provide relevant information on—

(1) pipeline construction projects; and

(2) the shut-down of pipeline construction projects.".

SEC. 5. VOLUNTARY INFORMATION SHARING SYSTEM.

(a) IN GENERAL.—Chapter 601 is amended by inserting the following after Section 60141:

"§ 60142. Voluntary information sharing system

"(a) IN GENERAL.—Subject to the availability of funds, the Secretary may establish a confidential and non-punitive voluntary information sharing system to encourage collaborative efforts to improve inspection information feedback and information sharing, with the purpose of improving natural gas transmission and hazardous liquid pipeline safety. The system shall include pipeline integrity risk analysis information and may include other information relating to reducing pipeline incidents such as lessons learned from accidents and near misses, process improvements, technology deployments, and other voluntary information sharing systems. The system shall protect proprietary information while encouraging the exchange of data, including in-line inspection and dig verification data, among operators, tool vendors, and the Secretary's representatives to facilitate the development of advanced pipeline inspection technologies and enhanced risk analysis. The Secretary may involve other public and private stakeholders in establishing and maintaining the system as appropriate.

"(b) DATA MANAGER.—In carrying out this section, the Secretary may engage a partner agency or non-governmental entity to receive, store, manage and provide for use of the program data and information submitted to the program.

"(c) LIMITATION ON DISCLOSURE.—Except as necessary for the Secretary or another federal authority to enforce or carry out any provision of federal law, any part of any record (including, but not limited to, a pipeline operator's analysis of its safety risks and its statement of the mitigation measures it has identified with which to address those risks) provided to the Secretary and retained in the system is exempt from the

requirements of section 552 of title 5, and specifically exempt under section 552(b)(3) of that title, if the record is—

"(1) supplied to the Secretary for purposes of the voluntary information sharing system; or

"(2) made available for inspection and copying by an officer, employee, or agent of the Secretary for purposes of the voluntary information sharing system.

"(d) EXCEPTION.—Notwithstanding subsection (b), the Secretary may disclose de-identified material or any part of any record comprised of facts otherwise available to the public if, in the Secretary's sole discretion, the Secretary determines that disclosure would be consistent with the confidentiality needed for the voluntary information sharing system.

"(e) VOLUNTARY PARTICIPATION.—No person may be compelled to participate in or submit data or information to the program.".

-(b) CLERICAL AMENDMENT.—The table of sections for chapter 601 is amended by inserting after the item relating to section 60141, the following:

"60142. Voluntary information sharing system.".

SEC. 6. PIPELINE SAFETY PILOT PROGRAMS.

(a) IN GENERAL.—Chapter 601 is amended by inserting the following after Section 60142:

"§ 60143. Pipeline safety pilot programs

"(a) PILOT PROGRAM DEFINED.—In this section, the term 'pilot program' means any program initiative, project, innovation, or other activity not specifically authorized under chapter 601 of this title.

"(b) IN GENERAL.—The Secretary may authorize and conduct pilot programs to evaluate innovative technologies or approaches for the safe operation of interstate gas or hazardous liquid pipeline facilities. Such pilot programs may include, for a time period not longer than 7 years, exemptions from a regulation prescribed under this chapter if the pilot program meets the requirements of subsection (c).

"(c) EQUIVALENT LEVEL OF SAFETY.—In authorizing or conducting a pilot program and before granting exemptions for purposes of a pilot program, the Secretary shall ensure, as a condition of approval of the program, that the safety measures in the

program are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would otherwise be achieved through compliance with the regulations prescribed under this chapter as determined by the Secretary. The Secretary's determination may be informed by standards or practices developed under a program accredited by the American National Standards Institute.

"(d) AUTHORITY TO REVOKE PARTICIPATION.—The Secretary shall immediately revoke participation in a pilot program for failure to comply with the terms and conditions of the pilot program or if continued participation would not be consistent with the goals and objectives of this chapter.

"(e) AUTHORITY TO TERMINATE PROGRAM.—The Secretary shall immediately terminate a pilot program if its continuation would not be consistent with the goals and objectives of this chapter.

"(f) PREEMPTION OF STATE RULES.— No State shall enforce any law or regulation that conflicts with or is inconsistent with an exemption or pilot program in effect under this section, with respect to the person operating under the exemption or participating in the pilot program.

"(g) PUBLIC NOTICE.—The Secretary shall publish in the Federal Register a notice of each pilot program, including the exemptions to be considered, and provide an opportunity for public comment before the effective date of the program. Following the conclusion of the comment period, the Secretary shall make a determination on the proposed pilot program within 120 days.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 601 is amended by inserting after the item relating to section 60142, the following:

"60143. Pipeline safety pilot programs.".

SEC. 7. STATE PIPELINE SAFETY PROGRAM GRANTS.

Section 60107(d) is amended by adding the following at the end:

"(3) In the aftermath of a natural disaster or major pipeline incident, the Secretary may consider the costs of a state rendering aid to another state with pipeline inspection or program assistance to be eligible for payment under subsection (a).".

SEC. 8. PROPERTY DAMAGE THRESHOLD.

Section 60102 is amended by adding at the end the following:

"(q) PROPERTY DAMAGE THRESHOLD.—

"(a) DEFINITIONS – In this section:

"(1) INITIAL INFLATION ADJUSTMENT. – The term "initial inflation adjustment", with respect to a property damage threshold, means the amount of $118,000.

"(2) PROPERTY DAMAGE THRESHOLD.—The term "property damage threshold" means the amount of monetary damages described in each of sections 191.3(1)(ii), 195.50(e), and 195.52(a)(3) of title 49, Code of Federal Regulations (or successor regulations).

"(3) SUBSEQUENT INFLATION ADJUSTMENT.—The term "subsequent inflation adjustment", with respect to a property damage threshold, means the amount, expressed as a percentage by which—

"(A) the Consumer Price Index for all Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor for the most recent month of October; differs from

"(B) the Consumer Price Index for all Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor for the month of October of the year of the previous adjustment.

"(b) UPDATES REQUIRED.—Not less frequently than biennially, the Secretary shall update notice and reporting requirements with respect to the property damage threshold under sections 191.3, 195.50, and 195.52 of title 49, Code of Federal Regulations (or successor regulations), to ensure that the property damage threshold is adjusted to account for inflation.

"(c) ADJUSTMENT PROCEDURE.—

"(1) INITIAL INFLATION ADJUSTMENT.—Not later than 90 days after the date of enactment of this Act, the Secretary shall issue a direct final rule that, with respect to the property damage threshold—

"(A) makes an initial inflation adjustment to $100,000 that shall take effect not later than the first January 15 following the date of enactment of this Act; and

"(B) describes procedures under which—

"(i) each subsequent inflation adjustment is made publicly available on the website of the Pipeline and Hazardous Materials Safety Administration; and

"(ii) the Secretary shall adjust the property damage threshold—

"(I) not less frequently than biennially; and

"(II) in accordance with this Act.

"(2) SUBSEQUENT INFLATION ADJUSTMENTS.—The Secretary shall make each subsequent inflation adjustment with respect to the property damage threshold—

"(A) in accordance with the procedures established by the Secretary under paragraph (1)(B)(ii); and

"(B) not later than January 15, beginning two years after the year in which the Secretary makes the prior inflation adjustment.".

SEC. 9. INACTIVE PIPELINES.

(a) IN GENERAL.—Chapter 601 of title 49, United States Code, is amended by inserting the following after Section 60143:

"Sec. 60144. Inactive pipelines

"(a) DEFINITIONS.—For purposes of this section—

"(1) "Pre-Commissioned" means a pipeline that has been constructed but has not yet commenced normal operations, is isolated from active assets, and does not contain hazardous liquid or natural or other gas.

"(2) "Active/In-Service" means a pipeline that is engaged in or available for normal operations and is connected and open to sources of hazardous liquid or natural or other gas or contains these products.

"(3) "Inactive/Out-of-service" means a pipeline that has ceased normal operations, has been purged of combustibles, has been isolated from all sources of hazardous liquid or natural or other gas or other energy sources, and maintains a blanket of monitored inert, non-flammable gas at low pressure.

"(4) "Abandoned" means a pipeline that has ceased all operations, has been purged of combustibles, has been isolated from all sources of hazardous liquid or natural or other gas or other energy sources, is disconnected from all sources of hazardous liquid or natural or other gas by being capped or blinded and sealed, and the pipeline has been permanently removed from service.

"(b) REGULATIONS.—

"(1) IN GENERAL.—The Secretary shall publish regulations setting forth the applicability of the pipeline safety requirements to each of the four operating status categories set forth in subsection (a). The applicability of the regulations shall be based on the commensurate risk that the pipeline status poses to the public, property, and the environment, and may include requirements to move from one operational status category to another if appropriate.

"(2) USE OF INDUSTRY CONSENSUS STANDARDS.—The Secretary should consider the use of available industry consensus standards or portions thereof when developing the regulations required by paragraph (1).

(b) CLERICAL AMENDMENT.—The table of sections for chapter 601 is amended by inserting after the item relating to section 60143, the following:

"60144. Inactive pipelines.".

SEC. 10. PUBLIC AWARENESS AND COOPERATIVE ACTIVITIES.

Section 60117(h) is amended—

(1) in paragraph (2) by striking "; and" and inserting a semicolon;

(2) in paragraph (3) by striking the period at the end and inserting " and"; and

(3) by adding at the end the following:

"(4) participate in public meetings, and other proceedings conducted by state and federal permitting authorities having responsibility for energy and other pipeline infrastructure project approvals;

"(5) conduct, through any combination of grants, contracts, cooperative agreements, or other activities, internal and external outreach and education programs to educate state and local officials and the public on pipeline projects and applicable standards that will advance the safe and efficient transportation of energy and other products by pipeline and advance the reliability and resilience of the Nation's pipeline infrastructure; and

"(6) develop, publish, and distribute public service announcements to educate and inform the public about pipeline safety.".

SEC. 11. LIQUEFIED NATURAL GAS FACILITY PROJECT REVIEWS.

Section 60103 is amended—

(1) by re-designating subsections (c)–(g) as subsections (d)–(h) respectively; and

(2) by adding a new subsection (c) to read as follows:

"(c) USE OF LOCATION STANDARDS.— If a Federal or State authority having responsibility for liquefied natural gas project permits or approvals is using the location standards as part of deciding on the location of a new facility and requests the Secretary of Transportation's determination of whether the standards would be met by a given project proposal, the Secretary may provide such determination. Nothing in subsections (a) and (b) of this section shall be construed to affect in any way the Natural Gas Act provisions codified at 15 U.S.C. §717b or the Federal Energy Regulatory Commission's authority to carry out those provisions (or other similar authority possessed by other federal or state agencies), or to require the Secretary to formally approve any project proposal or otherwise perform any facility siting functions.".

SEC. 12. COST RECOVERY AND FEES FOR FACILITY REVIEWS.

(a) PROJECT THRESHOLD AMOUNT.—Section 60117(n) is amended—

(1) by striking the number "$2,500,000,000" in paragraph (1)(B)(i) and inserting, in its place, the number "$250,000,000"; and

(2) by revising paragraph (3)(C) to read as follows:

"(C) USE.—Fees shall be collected in advance and used as offsetting collections for the necessary expenses of conducting facility design safety reviews, are made available without further appropriation, and shall remain available until expended."

(b) FEES FOR COMPLIANCE REVIEWS OF LIQUEFIED NATURAL GAS FACILITIES.—

(1) IN GENERAL.—Chapter 603 is amended by inserting after section 60302 the following:

"§ 60303. Fees for compliance reviews of liquefied natural gas facilities

"(a) IN GENERAL.—If the Secretary conducts a review to determine compliance with part 193, subpart B, of title 49, Code of Federal Regulations, in connection with an application to the Federal Energy Regulatory Commission for a liquefied natural gas facility, a fee for the necessary expenses of the review shall be imposed on the person who filed the application. The Secretary may not impose fees under this paragraph and section 60301(b) or 60117(n) of this title for the same compliance review.

"(b) MEANS OF COLLECTION.—The Secretary of Transportation shall prescribe procedures to collect fees under this section. The Secretary may use a department, agency, or instrumentality of the United States Government or of a state or local government to collect the fee and may reimburse the department, agency, or instrumentality a reasonable amount for its services.

"(c) ACCOUNT.—There is established a Liquefied Natural Gas Siting Account in the Pipeline Safety Fund established in the Treasury of the United States under section 60301 of this title.

"(d) USE OF FEES.—Fees collected under this section--

"(1) may be used only for an activity related to determining compliance with part 193, subpart B, of title 49, Code of Federal Regulations; and

"(2) shall be collected in advance and used as offsetting collections for the necessary expenses of conducting compliance reviews, are made available without further appropriation, and shall remain available until expended."

(c) CLERICAL AMENDMENT.—The table of sections for chapter 603 is amended by inserting after the item relating to section 60302, the following:

"60303. Fees for compliance reviews of liquefied natural gas facilities.".

SEC. 13. PERMITS FOR PIPELINES ISSUED BY OTHER AGENCIES.

(a) IN GENERAL.—Chapter 601 is amended by inserting the following after Section 60144:

"§ 60145. Permits for pipelines issued by other agencies.

"(a) IN GENERAL.—The authority of this chapter to prescribe Federal requirements for the safety of pipeline transportation and pipeline facilities, including the imposition of pipeline safety conditions in permits issued by a Federal agency authorizing the design, construction, operation, or maintenance, is exclusively reserved to the Secretary or designee.

"(b) APPLICABILITY OF OTHER FEDERAL REQUIREMENTS.—A Federal agency other than the Department of Transportation, with the exception of the Federal Energy Regulatory Commission under 15 U.S.C. §§ 717, *et. seq.*, may not impose a pipeline safety requirement, including a term or condition of permission granted by the agency, that varies from the standards issued under this chapter on any pipeline facility with respect to permitting.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 601 is amended by inserting after the item relating to section 60144, the following:

"60145. Permits for pipelines issued by other agencies.".

SEC. 14. OVERPRESSURE PROTECTION.

(a) IN GENERAL.—Chapter 601 is amended by inserting the following after Section 60145:

"§ 60146. Overpressure protection.—Not later than one year following the date of enactment of this Act, operators of gas distribution pipeline facilities must provide a secondary or back-up means of overpressure protection for regulator stations serving low pressure distribution systems and that employ the primary and monitor regulator design. The back-up protection must be capable of either shutting the flow of gas or providing a device fully capable of relieving gas to atmosphere to fully protect the distribution system from over-pressurization events."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 601 is amended by inserting after the item relating to section 60145, the following:

"60146. Overpressure protection.".

SEC. 15. MANAGEMENT OF CHANGE.

(a) IN GENERAL.—Chapter 601 is amended by inserting the following after Section 60146:

"§ 60147. Management of change.—The Secretary shall, if appropriate, amend the pipeline safety regulations to require all pipeline operators to prepare and implement a detailed set of energy control procedures to use when performing pipeline tie-in operations. The procedures must, at a minimum—

"(1) address management of change for varying field conditions; and

"(2) provide a means to actively monitor pressures and safely control gas and hazardous liquid sources at all times before, during and after such operations."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 601 is amended by inserting after the item relating to section 60146, the following:

"60147. Management of change.".

SEC. 16. OPERATOR QUALIFICATION.

Section 60131 is amended by adding at the end the following:

"(i) PIPELINE FACILITY CONSTRUCTION QUALIFICATION.—

"(a)IN GENERAL.—The Secretary shall, if appropriate, amend the pipeline safety regulations to extend the operator qualification regulations issued under this section to persons constructing new gas and hazardous liquid pipelines with the exception of unregulated gathering lines.

"(b) REPORTING REQUIREMENTS.—Section 60131(e) is amended—

"(1) by striking paragraph (4); and

"(2) by re-designating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.".

SEC. 17. TIMELY INCORPORATION BY REFERENCE.

Section 60102 of title 49, United States Code, is amended by striking subsection (l) and inserting the following:

"(l) UPDATING STANDARDS.—

"(1) IN GENERAL.—Not less frequently than every two years, the Secretary shall—

"(A) review the incorporated industry standards that have been adopted, either partially or in full, as part of the Federal pipeline safety regulatory program under this chapter that are modified and published by a standards development organization (as defined in section 2(a) of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4301(a))) and update them as necessary and appropriate; and

"(B) review new industry standards relating to pipeline safety that are—

"(i) developed and published by a standards development organization referred to in subparagraph (A); and

"(ii) proposed to be incorporated by reference through a petition for rulemaking in accordance with section 553(e) of title 5.

"(2) JUSTIFICATIONS. —If the Secretary does not incorporate or partially incorporates a standard described in paragraph (1), the Secretary shall issue and make available to the public a statement that explains why the Secretary did not incorporate or partially incorporated the standard.".

SEC. 18. CRIMINAL PENALTIES.

Section 60123(b) of title 49, United States Code, is amended—

(1) by striking "damaging or destroying" and inserting "damaging, destroying, vandalizing, tampering with, impeding the operation of, disrupting the operation of, or inhibiting the operation of"; and

(2) by inserting "including a facility already in operation and a facility under construction and intended to be operated as such a facility on completion of the construction," before "or attempting".

SEC. 19. JOINT INSPECTION AND OVERSIGHT.

Section 60105 is amended by adding at the end the following:

"(g) INSPECTIONS AND INVESTIGATIONS.—At the request of the Secretary, a state authority shall provide records of any inspection or investigation conducted by the state authority under this chapter. A state authority conducting an inspection or investigation of an intrastate pipeline facility pursuant to a certification under this section shall allow the Secretary to participate in the inspection or investigation upon request, except that the

Secretary may not enforce the safety standards against that facility unless United States Government jurisdiction is asserted and becomes final in accordance with the process set forth in subsection (f).".

SEC. 20. UNDERGROUND NATURAL GAS STORAGE USER FEES.

Section 60302 is amended—

(1) in subsection (c)(2)(B) by striking the period at the end and inserting "; and";

(2) in subsection (c)(2) by adding the following at the end:

"(C) may only be used to the extent provided in advance in an appropriations Act.";

(3) in subsection (c) by striking paragraph (3); and

(4) by adding the following at the end:

"(d) LIMITATIONS.— Fees prescribed under subsection (a) shall be sufficient to pay for the costs of activities described in subsection (c) . However, the total amount collected for a fiscal year may not be more than 105 percent of the total amount of the appropriations made for the fiscal year for activities to be financed by the fees.".

This technical drafting assistance is provided in response to a Congressional request and is not intended to reflect the viewpoint or policies of any element of the Department of Transportation or the Administration.

06/17/2019

Safer Pipelines Act of 2019, House Draft Bill _____
Section-by-Section Summary and PHMSA comments

Section-by-section	PHMSA comments
Sec. 1. Short title. [Ref: DOT Bill Sec. 1] This section provides that the Act may be cited as the "Safer Pipelines Act of 2019."	No comment
Sec. 2. Authorization of appropriations. [Ref: DOT Bill Sec. 2] This section would provide for operating expenses for PHMSA generally and amends the authorization of appropriations for PHMSA's pipeline programs codified in § 60125 by extending the authorization from FY 2020 through FY2023. This section also reauthorizes PHMSA's Emergency Response Grant, Pipeline Safety Information Grants to Communities, State Damage Prevention Programs, and One-Call Notification Programs.	With respect to Pipeline Safety Information Grants to Communities, PHMSA notes the bill may have unintentionally removed language in 60130(c) that states "Such amounts shall not be derived from user fees collected under 60301." This would remove the prohibition on the TAG grant being funded by user fees. PHMSA also notes that the bill does not include authority for a new LNG design review fee, a lower threshold for the pipeline design review fee, or a technical amendment to ensure collected funds can be used to offset costs associated with design review activities in a fiscal year other than the year of collection without further appropriation (see DOT bill sections 12, 13, and 22).
Sec. 3. Definitions. This section redefines the terms transporting gas and regulated gathering line. It adds "the movement of gas through regulated gathering lines" to the definition of "transporting gas." It also adds rural gathering lines to the definition of "transporting hazardous liquids," which would expand PHMSA's regulatory authority by removing previously existing limitations on PHMSA's authority over unregulated gathering lines. It would also add a statutory definition of "rural gathering line" based on specified minimum yield strength (SMYS), which differs from how it is currently defined based primarily on pipe diameter.	The basic definitions in section 60101 such as "transporting gas" are relied on by state and federal regulators and stakeholders and reflect many years of implementation through numerous rulemakings and applications. PHMSA has initiated proceedings to collect both incident and infrastructure data for both hazardous liquid gathering lines and gas gathering lines. In addition, PHMSA has initiated a rulemaking to address the requirements for gas gathering

	lines including large diameter/high pressure gas gathering. PHMSA suggests that Congress allow these regulatory initiatives to be completed.
Sec. 4. Purpose and General Authority. This section revises section 60102 by removing from cost benefit analysis factors: the reasonableness of the standard; based on a risk assessment, the reasonably identifiable or estimated benefits expected to result from implementation or compliance with the standard; based on a risk assessment, the reasonably identifiable or estimated costs expected to result from implementation or compliance with the standard. It also removes requirements to conduct a risk assessment and present it to gas or hazardous liquid technical advisory committee. For safety related conditions reports, subsection (b) would replace the requirement to notify "state authorities" with "State authorities'' and inserting "State officials, including local emergency responders and appropriate on-scene coordinators for any applicable contingency plans."	PHMSA's statutory cost-benefit analysis requirement at 49 U.S.C. 60102(b)(5), which requires a reasoned determination that the costs of the intended standard are justified by the benefits to the public has been in place for almost 25 years. It has contributed to the development of high-quality regulations that are effective, cost-benefit justified, and reflect sound policy. Striking the cost-benefit analysis is unlikely to speed the pace of rulemaking and publication of regulations because PHMSA will still be required to comply with the existing Executive Orders and DOT's policies and procedures. PHMSA is required by EO 12866 and DOT Order 2100.6 separately require a comparison of proposed courses of action in terms of the projected economic impact of a proposed regulation. It is also a factor that courts often consider in determining if an agency action is arbitrary and capricious under the Administrative Procedures Act. PHMSA notes that this proposal eliminates the risk assessment requirements in sec. 60102, but does not amend the risk assessment requirements in sec. 60115(c). Section 60115(c)(2) requires the respective advisory committees to "submit to the Secretary a report on the technical feasibility, reasonableness, cost-effectiveness, and practicability of the proposed standard and include in the report recommended actions." These provisions, while not necessary for application of the cost-benefit provisions in sec. 60102, are meant to help inform the Secretary's decisions made under sec. 60102**.**

	With respect to subsection (b) of the legislation, PHMSA notes that Safety Related Condition Reports are not used for purposes of incident response. Instead they provide notice to federal and state safety regulators so they can focus their periodic inspections and confirm that maintenance issues were resolved. Reporting for incident response purposes takes place through other types of required telephonic and written reporting. Congress may want to reconsider whether this subsection is necessary.
Sec. 5. Risk Analysis and Integrity Management Programs. This section amends section 60109 by: • Requiring the elimination of direct assessment as a method of conducting pipeline integrity assessments within two years of enactment. • Adding a new requirement for operators of hazardous liquid pipeline facilities located in in high consequence areas to install automatic spill detection and shut off valves.	With regard to eliminating direct assessment, PHMSA's current regulations require that all new and replaced pipes, valves, fittings, and other components are designed and constructed to accommodate internal inspection devices, per 49 CFR § 192.150. There are some situations where Direct Assessment is the only way to assess the integrity of the pipeline. During the rulemaking process for the rule titled "Pipeline Safety: Safety of Gas Transmission Pipelines, MAOP Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments," PHMSA's Gas Pipeline Advisory Committee recommended PHMSA clarify that direct assessment is allowed for the appropriate threats, but would not be allowed to be used to assess threats for which the method is not suitable. With respect to adding a new requirement for operators of hazardous liquid pipeline facilities located in in high consequence areas to install automatic spill detection and shut off valves, pipeline operators are already required to analyze the need for and implement risk mitigation measures which automatic valves may be a part of. In addition, the provision does not indicate

	how the intervals between these devices should be determined, meaning rupture detection and automatic valves are subjects that may be better to the rulemaking process (which has commenced).
Sec. 6. Community right-to-know and emergency preparedness. This section amends section 60116, public education programs, to require that: • Pipeline operators review and modify their public education programs and submit a report to PHMSA within one year of enactment. • Pipeline operators establish liaison with state emergency response commissions and local emergency planning committees established under EPCRA. • Pipeline operators make certain information available to these organizations, including integrity management program information and maps. • PHMSA make safety-related condition reports and incident reports available to the public. • PHMSA prescribe requirements for public access to integrity management programs. • Pipeline operators to provide pipeline maps to each municipality in which the pipeline is located. • Pipeline operators to submit, and PHMSA to make public, bi-annual "Segment Reports" containing for each pipe segment operator information, pipeline and product information, state and local emergency response information, and various other information regarding testing, defects identified, leak detection systems, incident and enforcement history, and integrity management activities.	The requirements for pipeline operators to have public education programs and make them available for periodic review by PHMSA already exist in 49 CFR sections 102.616 and 195.440. The language proposing a review of operators' public education programs within 1 year of reauthorization could unintentionally imply that this is a one-time review. Regarding the requirement to share integrity management programs with State emergency response commissions and local emergency planning committees, PHMSA does not believe that the intended safety benefit of this provision is likely to be achieved as drafted. These plans are intended for managing risks on pipelines and do not lend themselves to emergency response. If this provision is pursued, the information should be made available for viewing at secure locations. Regarding the availability of maps, currently, local officials can currently access gas transmission and hazardous liquid transmission pipelines in the National Pipeline Mapping System, which is submitted by operators to PHMSA annually. Therefore this requirement is duplicative. PHMSA currently receives much of the information proposed for pipeline segment reports. However, this information is provided by entirety of pipeline system, not pipeline segment. PHMSA believes that since pipeline segments are part of the larger pipeline, that this is already covered in PHMSA's authority and to break down

	the information by segment as proposed would be unnecessarily burdensome. The requirements contained in 2(A-H) overly broad and duplicative. It is impractical and inefficient for PHMSA to review a report in the format proposed since PHMSA since much, if not all, of the information is already available to PHMSA. PHMSA currently gets general information on 2(A), 2(G), 2(H), and 2(I) and parts of 2(B) and has access to 2(C)-2(F) during the normal course of inspections. If this information is required of operators, PHMSA recommends that operators maintain this information in a geospatial format.
Sec. 7. Actions By Private Persons. This section amends section 60121 to add mandamus requirements. "A person may bring a civil action in an appropriate district court of the United States to compel the Secretary to perform a nondiscretionary duty under this chapter that the Secretary has failed to perform."	This amendment to the statute is unnecessary, as there already exists a legal framework by which any person adversely affected by PHMSA's actions—or lack thereof—may seek judicial review and obtain an order directing the Agency to perform a statutory duty. Under the Administrative Procedure Act, a reviewing court may "compel agency action unlawfully withheld," which is the same type of relief sought under mandamus. There have already been occasions when persons have sought judicial review of PHMSA actions under this provision. As such, the addition of a new mandamus clause is neither necessary nor would it speed up the pace of rulemakings.
Sec. 8. Civil Penalties. This section increases the maximum civil penalty amounts currently in section 60122. The maximum civil penalty for a related series of violations, currently $2,000,000, is eliminated. The penalty for a person violating a standard or order under section 60103 or 60111 (both related to LNG facilities) liable for $200,000 rather than the current $50,000 for each violation. A person violating section 60129 (Protection of employees providing pipeline safety information), or an order issued thereunder, is liable to the Government for a civil penalty of not	With respect to the maximum administrative civil penalties for a related series of violations, PHMSA notes that these caps mainly apply to typical code compliance citations. For major pipeline violations involving fatalities or major environmental damage, PHMSA has the ability to refer the case to the DOJ for judicial proceedings in which these caps do not apply. In addition, civil penalties

more than $200,000 for each violation, raised from the current $1,000.	are but one tool PHMSA has to ensure compliance. PHMSA has found that using corrective action orders, safety orders, and compliance orders, significantly helps ensure compliance. To illustrate, over a 10-year period the total cost to industry of compliance with the corrective action orders, safety orders, and compliance orders is estimated to have exceeded $3.3 billion. Sometimes PHMSA's ability to go back to a company and require them to make enterprise corrections, improvements, and repairs, dwarfs what PHMSA is able to do solely with civil penalties.
Sec. 9. Criminal Penalties. This section amends the legal standard for criminal actions from "knowingly and willfully" to "knowingly or recklessly."	The current criminal standard of "knowing and willful" has not stopped DOJ from successfully pursuing pipeline prosecutions. For example, in August 2016, the U.S. Attorney for the Northern District of California won a jury verdict against Pacific Gas & Electric Company on 6 felony counts arising from the 2010 San Bruno, California gas pipeline accident. Five of the felony counts were for willfully violations of the pipeline safety regulations and one was for obstructing the NTSB investigation into the accident.
Sec. 10. Maximum Allowable Operating Pressure. This section amends section 60139 to require that PHMSA promulgate requirements for operators to conduct a verification of records of the owner or operator relating to the interstate and intrastate gas transmission pipelines within two years of enactment. It removes the limitation currently in the statute for this verification to apply only to certain class location areas. It requires that PHMSA promulgate regulations for conducting tests to confirm the material strength of previously untested natural gas transmission pipelines operating at a pressure greater than 30 percent of specified minimum yield strength within two years of enactment. This proposal removes the limitation to pipelines operating at greater than 30% SMYS located in HCAs that is currently in the statute.	PHMSA notes that the effect of this change would be to eliminate the retroactive applicability prohibition for all pre-1970 gas transmission pipelines operating above 30% SMYS which could have consequences for pipeline operations. The Gas Transmission final rule, which is currently under review at OMB, as recommended by the Gas Pipeline Advisory Committee, will address these issues in a detailed and careful manner as appropriate for all four class locations.

The effect of these changes is that Class 1 and 2 gas transmission pipelines that are not in an HCA would be subject to the requirements in 60139 to: (1) verify the accuracy of MAOP records and confirm the accuracy of their MAOP; (2) report to DOT those lines that the records are insufficient to confirm the accuracy of established MAOP; and (3) comply with MAOP reconfirmation process. It also requires that the regulations include requirements that all natural gas transmission pipelines be subjected to a hydrostatic pressure test that incorporates a spike test.	
Sec. 11. Direct Hire Authority for PHMSA. This section allows the Administrator to appoint qualified candidates to positions described in subsection (b) without regard to sections 3309 through 3319 of title 5, United States Code. Subsection (b) applies with respect to candidates for any position that would likely allow increased activities relating to pipeline safety, as determined by the Administrator. This authority ends Sept. 30, 2024.	No comment.
Sec. 12. Report. This section requires an annual report regarding PHMSA's efforts to hire women, minorities, and veterans as inspectors since January 1, 2012.	No comment.

June 19, 2019

The Honorable Bobby Rush
Chairman
House Energy & Commerce Committee
Subcommittee on Energy
2188 Rayburn House Office Building
Washington, DC 20515

The Honorable Fred Upton
Ranking Member
House Energy & Commerce Committee
Subcommittee on Energy
2183 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Rush and Ranking Member Upton:

As Chief Executive Officer of NACE International, the Worldwide Authority on Corrosion, I'm writing with respect to an upcoming hearing on pipeline safety. On June 19, the House Energy and Commerce Subcommittee on Energy will review the Leonel Rondon Pipeline Safety Act and a discussion draft on the reauthorization of the Pipeline and Hazardous Materials Safety Administration (PHMSA). NACE is concerned with provisions in each proposal and is submitting this letter to be included in the record.

Corrosion is a major concern for all pipelines. Pipelines face challenges both from external corrosion, which can cause issues such as abnormal operating pressures, and internal corrosion, which can degrade the pipe's overall strength and lead to leaks.

Despite advances in technology and training, corrosion remains a major factor in pipeline failures. According to a study from the Government Accountability Office (GAO), corrosion caused "22% of all significant pipeline incidents from 2010 to 2015" and was the largest cause of significant incidents in that period. When there is a corrosion failure, the results are often catastrophic – Merrimack Valley, the Kalamazoo River, and San Bruno.

NACE is a not-for-profit technical society with the mission to equip society for the protection of people, assets and the environment from the adverse effects of corrosion. We develop standards, provide training and certification programs, sponsor research and host conferences to move this mission forward. Our members are committed to working with lawmakers to improve policies that lead to the increased knowledge and expertise required to protect our pipeline system from this silent menace.

The Leonel Rondon Pipeline Safety Act & Operator Qualification

As introduced, the bill requires regulations to improve gas pipeline operators' risk management plans, institutes best industry practices for holistic safety management, and mandates the use of accurate and reliable maps and records. The legislation requires changes to the Operator Qualification (OQ) Rule and increased involvement from professional engineers. Specifically, the language requires "covered tasks to be approved by a professional engineer licensed to practice in the State in which it is to be carried out."

NACE remains concerned with the credibility of the current OQ rule and applauds policy makers for providing options to increase safety. The current OQ rule promotes a minimum level of training, and companies comply with the rule via training and assessment methodologies that largely are well below basic standards for adult learning or accurate/verified content. Stories have become commonplace relative to OQ program material/exam that won't help avoid failures – poor training and lack of assessment of comprehension will eventually lead to a catastrophic failure. The proposed legislation includes new involvement in OQ from professional engineers and may be a good start but may miss the mark. We must bring to your attention that PEs regularly lack knowledge or experience in corrosion science and technology – corrosion is absent from most university engineering programs and PE examinations -- the PE requirement will not be effective in combatting the cause of up to 22% of pipeline

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failures. Legislation should emphasize technical experts in other areas, including corrosion prevention. Corrosion prevention is a highly technical and niche skill that requires years of training and knowledge to fully develop and implement complex solutions, such as cathodic protection systems.

PHMSA Reauthorization & Direct Assessment

This year, Congress will consider a reauthorization of the Pipeline and Hazardous Materials Safety Administration (PHMSA). Among other things, the PHMSA reauthorization will focus on funding challenges, personnel, regulatory mandates, and other important policy options. A current House Energy and Commerce Committee discussion draft outlines several proposals, including "the phaseout of direct assessment" as a method of assessing pipelines.

NACE is very concerned with this language and its unintended consequences on pipeline safety. Direct assessment is a valuable resource in the pipeline safety toolbox and when properly applied by qualified professionals, it enables operators to successfully identify potential threats and issues before an incident occurs. When ensuring the integrity of a pipeline system, operators should use all available resources to gather data and establish adequate protection. Additionally, not all pipelines (especially older ones) can be examined through other means and banning direct assessment would be problematic to implement.

Any change in policy should encourage several examination methods and not limit options or protective measures. Increasing public safety shouldn't limit examination methods. Additionally, policies should require the highest levels of operator knowledge, training, and experience so that potential threats are not only identified, but successfully averted.

Conclusion

NACE looks forward to working with members of this subcommittee, the overall committee, and Congress to improve overall safety. We're readily available to be a resource to policy makers and welcome the opportunity to connect you with experts, including pipeline inspectors and auditors.

For more information, please contact NACE's Manager of Government Relations Adam Christopher – adam.christopher@nace.org

Thank you for your time and consideration.

Sincerely,

Robert H. Chalker
Chief Executive Officer
NACE International

Subcommittee on Energy
Hearing on
"Legislative Solutions to Make Our Nation's Pipelines Safer"
June 19, 2019

Ms. Christina Sames
Vice President, Operations & Engineering
American Gas Association

The Honorable Robert E. Latta (R-OH):

1. What are the main elements of good quality state programs, and what is the industry doing to provide technical training and support?

RESPONSE: Some of the main elements of a good quality state programs include -

- Well trained inspectors - Having inspectors that are well trained, understand natural gas operations and the challenges of operating buried infrastructure, and want to work with operators to improve pipeline safety. A state program that encourages transparency, rather than creating a punative environment, is key to moving Pipeline Safety Management System (PSMS) implementation beyond the operator forward.
- Transparent Non-punative Communication - An encouragement for operators to openly share challenges they are facing (e.g., inability to obtain specialized contractors or materials), near misses, issues they find and the actions they are taking to address the issues, and do not fine or penalize an operator for these open sharings unless it is determined that a discovered issue was due to egregious actions.
- Fair Leadership - Having leaders that are tough but fair.
- Effective Public Communication - Having a culture of open communication with the public is a key component to pipeline safety. With third party damage still a leading cause of distribution incidents, its important that state programs provide more information and a better understanding of the potential risks of not calling before digging.

Examples industry actions to provide technical training and support include –

- Trade associations like AGA have a multitude of technical committees and discussion groups that share leading practices, develop technical publications to advance operational excellence, and create opportunities to discuss challenges and seek solutions. Workshops on technical issues deepen attendee understanding of emerging issues and conferences cover a wide range of current topics. Exhibitions showcase existing and new technologies and products. AGA has a robust SOS program that allows an operator to obtain solutions to problems and a Best Practices Program that allows operators to benchmark themselves against other operators and the industry and to learn from those that are leading in a particular area.
- The industry's technical vendors regularily conduct training on their products and the science behind their product. In addition, vendors seek improvement ideas from operators

to advance their products to make them more effective.

- Regional gas associations have training modules and programs for everyone from field workers through operational leaders. They also hold conferences and workshops, have technical committees, and create publications.
- The industry has also partnered with trade schools and community colleges to create training programs specific to our industry, have created gas "boot camps" to educate new employees in specific areas, and a number of gas utilities have created "gas cities" where they can train employees on leak detection, excavation, gas operations, emergency response, and many other areas. Many utilities share their "gas cities" with local fire fighters and emergency responders so that they can conduct training of their personnel on responding to a gas incident.

2. Is there anything that Congress, or PHMSA, could do to support cooperation and collaboration among State regulators and the industry?

RESPONSE: Yes.

- Congress can encourage PHMSA to change how state programs are evaluated. State programs should not be evaluated exclusively on how many non-compliance orders were issued. Instead, there should be incentives for the number of issues brought to the states' attention outside of an audit and credit for transparent conversations between state regulators and the industry of how the operator is approaching safety and the actions they are taking to address identified issues.
- Congress and PHMSA can encourage states to promote the adoption of PSMS, which embraces cooperation and collaboration, and provides a better understanding to the public of how PSMS will advance safety beyond regulations.
- Congress can encourage PHMSA and state regulatory agencies to also adopt PSMS since the concepts of Plan-Do-Check-Act are not specific to just the industry and includes increased emphasis on cooperation and collaboration.
- PHMSA can continue and engage stakeholders to share their progress. PSMS is aimed to continuously review an operators system and learn from findings, observations, and near misses. Encouraging the sharing of findings without that sharing resulting in punative actions helps advances safety and creates an environment where others within the industry can take proactive measures.

The Honorable Cathy McMorris Rodgers (R-WA):

1. As you know, PHMSA is currently undertaking significant rulemakings for both gas and liquid pipelines.

    a. I would like for you to put these rulemakings in context for us. How significant of a change are you expecting from the current regulatory framework?

RESPONSE: The pending and recently completed rulemakings are very significant. They include:

- Testing and confirming maximum allowable operating pressure of various transmission lines that were previously untested or do not have adequate records.
- Creation on moderate consequence areas (MCAs) and expansion of transmission integrity assessments for pipelines in these areas.
- Installation of automated and remotely controlled valves on new and fully replaced transmission pipelines and enhanced emergency response.
- Regulations for underground storage facilities.
- New repair criteria for transmission lines inside and outside of high consequence areas (HCAs), new pipeline inspection requirements following extreme events, requiring safety features on in-line inspection tool launchers and receivers, new pipeline corrosion control, codifying management of change, and strengthening integrity management assessment.
- Requirements for operators to incorporate seismicity into their risk analysis and data integration, retaining welder qualification records, and reporting of maximum allowable operating pressure exceedances.
- There are also a number of hazardous liquid pipeline rulemakings including changes to the definition of Unusually Sensitive Areas, and new regulations for natural gas gathering lines.

b. Given the pending regulations at PHMSA, what are your member's priorities for pipeline safety reauthorization?

RESPONSE: AGA's members priorities reauthorizaton include a final bill that:

- Remains focused on pipeline safety and is not simply a "facade" (may sound good to the general public but will not advance pipeline safety).
- Provides flexibility to address potential safety issues, including the use of alternate technologies, practices or methods that have demonstrated an equivilant level of safety.
- Does not weigh down the regulatory process but rather focuses on collaboration of stakeholders from the public and industry to evaluate and come to consensus on key regulatory issues.
- Continues to bring all stakeholders to the table.

2. I know your pipeline companies are serious about improving their safety records and incorporating lessons-learned from prior accidents.

a. Can you provide some recent examples of lessons-learned, or recommendations made by PHMSA or NTSB that have been implemented?

RESPONSE:

- Following the Merrimack Valley incident, AGA provided various opportunities for operators to share lessons learned as well as guidance documents aimed are aiding operators in reviewing their low pressure distribution systems. Many AGA members not only

participated in the creation of these guidance documents but used these tools to review their own system and, as needed, implemented changes. Additionally, AGA members reviewed their existing distribution risk models to ensure that low frequency events, such as the Merrimack Valley Incident, are being appropriately considered.

- Both the NTSB and PHMSA have encouraged operators to adopt a PSMS. Shortly after the PSMS recommended practice was released, AGA's Board encouraged all AGA members to consider adoption of PSMS. Last year, the Board asked members to commit to implementing PSMS within three years. This includes adoption of the standard, conducting a gap analysis and beginning to take actions to address identified gas. Based on an annual PSMS survey, operators are well underway to meet this commitment. In addition, in October 2020. the Board approved three additional actions to advance PSMS – 1) the creation of a PSMS Executive Steering Committee to advance PSMS, increase the sharing of incidents and near misses, and guide industry actions, 2) piloting a Virtual Assessment Program that will allow operators to be assessed by other operators on a specific PSMS element and 3) the creation of an Operational Risk Data Committee (ORDC) that will conduct an in-depth analysis of PHMSA's incident database in an attempt to identify trends and issues and better inform operator risk analysis. The PSMS Executive Committee will have their first meeting in January and the pilot of the Virtual Assessment Program begins the week of December 7, 2020.
- The NTSB encourages the sharing of incidents and near misses. This sharing occurs in numerous venues, including AGA's annual Safety Summit, and through teleconferences following a major event.
- While not recent, AGA's Peer Review Program which allows operators to be reviewed, by their peers, on topics such as safety culture, pipeline safety risk management, technical training and worker procedures, excavation damage, quality management in gas operations, contractor construction relationships, emergency management & public safety, damage prevention, workforce development and succession planning, systems records management, safety at customer touch points, and key performance indicators for gas operations is a direct result of the NTSB suggestion that industry look at how other industry's were advancing safety. The program officially started in 2015.

Subcommittee on Energy
Hearing on
"Legislative Solutions to Make Our Nation's Pipelines Safer"
June 19, 2019

Mr. Andrew J. Black
President and CEO
Association of Oil Pipe Lines

The Honorable Robert E. Latta (R-OH):

1. As you know, the States oversee more than 80 percent of the nation's pipeline infrastructure—especially the gas distribution pipelines that connect our homes and businesses to the main transmission system.

    a. Can you talk a little bit about state programs and the relationships that your member companies have with State and local pipeline safety regulators?

    RESPONSE: The pipeline safety statutes allow for States to assume safety authority over intrastate gas pipelines, hazardous liquid pipelines, and underground natural gas storage through Certifications and Agreements with PHMSA under 49 U.S.C. §§ 60105- 60106.

    Pipeline operators work with state pipeline safety regulators approved by PHMSA to carry out safety programs. To participate in PHMSA's pipeline safety and underground natural gas storage programs States must adopt the minimum federal pipeline safety regulations; however, States may pass more stringent state regulations for pipeline and underground natural gas storage safety through their State Legislatures. If States did not participate in the pipeline safety or underground natural gas storage programs, the inspection and enforcement of these intrastate pipeline and underground natural gas storage facilities would be PHMSA's responsibility.

    b. What are the main elements of good quality state programs and what is the industry doing to provide technical training and support?

    RESPONSE: Good state programs employ a risk-based approach combining minimum safety standards and performance based expectations, recognizing the great variety in pipeline materials, construction techniques, delivered products, operating conditions and operating environments, and not applying single one-sized fits all requirements. To support States participating in the pipeline safety and underground natural gas storage programs PHMSA provides grants to States to reimburse up to 80 percent of the total cost of the personnel, equipment, and activities reasonably required by the State agency for conducting its pipeline safety or underground natural gas storage program during a given calendar year. State pipeline safety and

underground natural gas storage programs provide a local presence for protecting the public from pipeline and underground natural gas storage incidents. PHMSA works closely with State pipeline and underground natural gas storage programs to improve safety across the Nation.

c. Is there anything that Congress, or PHMSA, could do to support cooperation and collaboration among State regulators and the industry?

RESPONSE: Industry welcomes efforts to coordinate state and federal pipeline oversight efforts. A provision under consideration in pipeline safety reauthorization legislation would direct PHMSA within 18 months to amend the auditing program for its drug and alcohol regulations to minimize duplicative audits of the same operators by federal and state agencies.

Industry also encourages PHMSA to work with states to encourage robust damage prevention programs at the local level. Damage from third parties striking pipelines and other utilities is a serious source of personal injury and pipeline incidents. State programs to prevent damage to pipelines can sometimes provide waivers to call-before-you dig requirements on agricultural or government activities that pose a threat to pipeline safety. Limiting these state damage prevention exceptions will improve pipeline safety.

The Honorable Cathy McMorris Rodgers (R-WA):

1. As you know, PHMSA is currently undertaking significant rulemakings for both gas and liquid pipelines.

   a. I would like for you to put these rulemakings in context for us. How significant of a change are you expecting from the current regulatory framework?

   RESPONSE: The current statutory and regulatory framework for pipeline safety oversight is sound. Federal law and PHMSA regulation employ a risk-based approach combining minimum safety standards and performance based expectations. This system recognizes the great variety in pipeline materials, construction techniques, delivered products, operating conditions and operating environments. No single one-sized fits all regulatory requirement would address all pipelines or conditions.

   Within the current successful framework, Congress, PHMSA and safety agencies do identify emerging threats, incident causes requiring response or other gaps in regulations requiring further attention. In attempting to address these needs, PHMSA regulatory proposals historically have run into delay or opposition when they proposed overly broad scopes beyond the core issues at hand or requirements where the costs exceeded the expected benefits.

Industry generally encourages PHMSA to tailor its proposals within the current regulatory framework in ways that reflect the risk presented, avoid one-size fits all requirements, and harness the capabilities of current technology and knowledge.

b. Given the pending regulations at PHMSA, what are your member's priorities for pipeline safety reauthorization?

RESPONSE: Pipeline safety reauthorization legislation offers us an opportunity to continue improvements in pipeline safety. Reauthorization should be a place where we can collaborate, work on proposals that bring stakeholders together, and protect each other from harm. The liquid pipeline industry asks that we move forward with positive solutions to harness the benefits of innovation and technology to improve pipeline safety, bring stakeholders together to improve PHMSA programs and regulations, and protect the public from harm.

Technology and innovation offer opportunities to move pipeline safety forward. Hi-tech inspection tools can now scan pipelines like an MRI or ultrasound at the doctor's office. And yet crucial sections of PHMSA's inspection and maintenance regulations are nearly 20 years old and have gaps that fail to address problems like cracking in pipelines. AOPL recommends Congress authorize a pilot program to provide PHMSA the data it needs to modernize and fill gaps in its regulations.

2. I know your pipeline companies are serious about improving their safety records and incorporating lessons-learned from prior accidents.

a. Can you provide some recent examples of lessons-learned, or recommendations made by PHMSA or NTSB that have been implemented?

RESPONSE: Pipeline company safety records are improving. Over the last 5 years, pipeline operators have reduced the number of liquids pipeline incidents impacting people or the environment by 20%. This is government data publicly available from the U.S. Pipeline and Hazardous Materials Safety Administration (PHMSA). PHMSA data also shows pipeline incidents impacting people or the environment caused by incorrect operation are down 38% over the last 5 years, and pipeline incidents impacting people or the environment caused by corrosion, cracking or weld failures are down 35% over the last 5 years.

The improved pipeline safety record is due in large part to industry and AOPL member companies working hard to improve pipeline safety. We are transparent about where we are doing well and where we can do better. The statistics above come from the performance report we develop jointly each year with the American Petroleum Institute (API) analyzing pipeline safety data. We use this analysis to guide our industry-wide safety programs focusing on key pipeline safety issues.

Through this strategic effort the pipeline industry has addressed key safety

recommendations from Congress, the U.S. National Transportation Safety Board (NTSB), PHMSA. NTSB recommendations after a major pipeline incident in Marshall, MI in 2010 led to pipeline operators working together through AOPL and API to develop new industry-wide recommended practices (RP) to help operators find and fix cracking in pipelines (API RP 1176), manage leak detection programs (API RP 1175), respond to pipeline emergencies (API 1174) and apply safety management systems to pipelines (API 1173). Industry's work to apply holistic safety management programs found successful in the aviation, nuclear and chemical industry to the pipelines industry earned the pipeline industry a rare commendation from NTSB that our response to their recommendation "exceeded their expectations."

The pipeline industry is also diligent in taking PHMSA advisory bulletins to heart. A lesson learned from the Marshall, MI incident was the need to integrate inspection results and safety factors from multiple sources to determine if their additive factor separately was insufficient to indicate a serious safety threat, but when combined pointed to a potential issue requiring attention. PHMSA issued an advisory bulletin on this issue and industry responded by developing a technical report on pipeline integrity data management and integration. Industry has also incorporated lessons learned from PHMSA bulletins on extreme weather by expanding its recommended practice for assessing river crossings to guard against river scouring or bank washouts.

That said, the pipeline industry is not waiting to respond to recommendations from other safety stakeholders. This spring, the pipeline industry issued an updated recommended practice for its core integrity management inspection and maintenance program and is driving to complete a new recommended practice for assessing dents in pipelines accompanied by cracking or corrosion. Both industry documents contain recommended best practices that go beyond PHMSA's regulations in areas where PHMSA requirements are out of date or contain gaps. For these reasons, industry continues to support tools to help modernize PHMSA's requirements, such as the proposed technology demonstration pilot program, the Voluntary Information Sharing program, and incorporating the latest safety recommendations by reference into PHMSA regulations.

Mr. Christopher "C.J." Osman
Director of Operations, Safety and Integrity
Interstate Natural Gas Association of America

The Honorable Robert E. Latta (R-OH):

1. As you know, the States oversee more than 80 percent of the nation's pipeline infrastructure—especially the gas distribution pipelines that connect our homes and businesses to the main transmission system.

    a. Can you talk a little bit about state programs and the relationships that your member companies have with State and local pipeline safety regulators?

    RESPONSE: Federal regulators from PHMSA set baseline requirements for all pipeline operators and directly oversee interstate gas transmission pipelines, while State regulators oversee intrastate gas transmission and distribution. This shared oversight responsibility between Federal and State regulators is a key reason why America's pipeline infrastructure enjoys a strong safety record.

    The Interstate Natural Gas Association of America (INGAA) only represents interstate natural gas transmission pipelines that are regulated entirely by the PHMSA Federal program. As such, I do not have specific comments to offer regarding relationships with State regulatory agencies.

    b. What are the main elements of good quality state programs and what is the industry doing to provide technical training and support?

    RESPONSE: INGAA only represents interstate natural gas transmission pipelines that are regulated entirely by the PHMSA Federal program. As such, I do not have specific comments to offer regarding the effectiveness of state regulatory programs.

    c. Is there anything that Congress, or PHMSA, could do to support cooperation and collaboration among State regulators and the industry?

    RESPONSE: Reauthorizing the Federal pipeline safety program is essential in order for the State programs to function effectively and engage in collaborative efforts because PHMSA provides much of the funding for State pipeline safety programs. Without reauthorization legislation, funding for existing State pipeline safety programs may be at risk, and it also becomes challenging to fund new state programs that may be warranted to meet evolving needs.

The Honorable Cathy McMorris Rodgers (R-WA):

1. As you know, PHMSA is currently undertaking significant rulemakings for both gas and liquid pipelines.

    a. I would like for you to put these rulemakings in context for us. How significant of a change are you expecting from the current regulatory framework?

    RESPONSE: PHMSA is finalizing four rulemakings to fulfill the outstanding gas transmission pipeline safety mandates that were at the center of the last two Pipeline Safety Act reauthorizations:

    1) **"Pipeline Safety: Safety of Gas Transmission Pipelines: MAOP Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments" (final rule published in October 2019);**
    2) **"Pipeline Safety: Safety of Gas Transmission Pipelines, Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments" (final rule expected in January 2021);**
    3) **"Pipeline Safety: Amendments to Parts 192 and 195 to Require Valve Installation and Minimum Rupture Detection Standards" (final rule expected in April 2021); and**
    4) **"Pipeline Safety: Class Location Requirements" (proposed rule published in October 2020).**

    Collectively, these rulemakings represent the most significant enhancement to gas transmission pipeline safety regulations since the federal safety code was first promulgated in 1970. These rules reflect a comprehensive update to PHMSA's gas transmission regulatory code, some aspects of which has remained stagnant for decades. These updates will make great strides in incorporating modern technologies and engineering practices into our nation's pipeline safety program.

    In addition to enhancing safety, incorporating newer technologies and practices into PHMSA's regulations will promote greater energy reliability, reduced emissions, and more efficient use of operators' resources because today's methods are generally less invasive than those that we relied upon decades ago. INGAA members strongly support prompt completion of these rulemakings.

    b. Given the pending regulations at PHMSA, what are your member's priorities for pipeline safety reauthorization?

    RESPONSE: INGAA's priority is ensuring that PHMSA has the resources

and direction from Congress to complete these pending rulemakings. Once the rulemakings have been completed and implemented by pipeline operators and PHMSA, and there has been sufficient time to assess the impacts of the new requirements, then we will have a better picture of what PHMSA's future policy priorities should be.

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