



U.S. House of Representatives
Committee on Transportation and Infrastructure

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SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Railroads, Pipelines, and Hazardous Materials

FROM: Subcommittee on Railroads, Pipelines, and Hazardous Materials Staff

SUBJECT: Hearing on Implementation of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006

PURPOSE OF HEARING

The Subcommittee on Railroads, Pipelines, and Hazardous Materials is scheduled to meet on Wednesday, June 25, 2008, at 2:00 p.m., in 2167 Rayburn House Office Building to receive testimony on Implementation of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006.

BACKGROUND

The Pipeline and Hazardous Materials Safety Administration ("PHMSA") was created under the Norman Y. Mineta Research and Special Programs Improvement Act of 2004. Prior to enactment of the Act, the Department of Transportation's ("DOT") Research and Special Programs Administration handled pipelines and hazardous materials safety. PHMSA is charged with the safe and secure movement of almost one million daily shipments of hazardous materials by all modes of transportation. The agency also oversees the nation's 2.2 million miles of gas and hazardous liquid pipelines, which account for 64 percent of the energy commodities consumed in the United States.

Pipeline safety is governed by the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, which have now been codified in Subtitle VIII of Title 49, U.S. Code. Chapters 601, 603, and 605 of Title 49 were amended in 2002 and again at the end of the 109th Congress.

The Acts provide for Federal safety regulation of facilities used in the transportation of natural and other gases and also of hazardous liquids by pipeline. The regulatory framework promotes pipeline safety through exclusive Federal authority for regulation of interstate pipelines and facilities. States may impose additional standards for intrastate pipelines and facilities as long as they are compatible with the minimum Federal standards.

PHMSA's pipeline safety functions include developing, issuing, and enforcing regulations for the safe transportation of natural gas (including associated liquefied natural gas facilities) and hazardous liquids by pipeline. Regulatory programs are focused on ensuring safety in the design, construction, testing, operation and maintenance of pipeline facilities, and in the citing, construction, operation and maintenance of liquefied natural gas facilities.

In support of these regulatory responsibilities, PHMSA administers grants to aid States in conducting intrastate gas and hazardous liquid pipeline safety programs; monitors performance of those State agencies participating in the programs; collects, compiles, and analyzes pipeline safety and operating data; and conducts training programs through the Transportation Safety Institute for government and industry personnel in the application of the pipeline safety regulations. PHMSA also conducts a pipeline safety technology program with emphasis on applied research.

The pipeline safety program was strengthened and reauthorized through 2010 at the end of the 109th Congress by the Pipeline Inspection Protection, Enforcement, and Safety Act of 2006 ("PIPES Act").

The Act required DOT to promulgate a rulemaking to ensure that all low-stress hazardous liquid pipelines are subject to the same standards and regulations as other hazardous liquid pipelines. It also strengthened enforcement at DOT by increasing the number of Federal pipeline safety inspectors from 90 to 100 in 2007, 111 in fiscal year 2008, 123 in fiscal year 2009, and 135 in fiscal year 2010 – a 50 percent increase in inspectors by 2010.

It strengthened PHMSA's authority to order pipeline operators to take corrective action to remedy a condition that poses a threat to public safety, property, or the environment. It strengthened the Administration's authority to help facilitate the restoration of pipeline operations during manmade or natural disasters, and it required implementation of a number of National Transportation Safety Board recommendations dealing with worker training, fatigue, and the installation of excess flow valves.

The Act required operators of natural gas distribution pipelines to implement a pipeline integrity management program with the same or similar integrity management elements as the hazardous liquid and natural gas transmission pipelines. Distribution pipelines make up 1.8 million miles of the 2.2 million miles of pipelines in the United States. They distribute gas to local towns, businesses, and homes, and are responsible for the majority of pipeline deaths and injuries.

Further, the Act provides PHMSA with new federal civil authority to enforce one-call notification laws against excavators and pipeline owners and operators if a state's enforcement of one-call notification requirements is deemed inadequate. The Act also provides guidance to States on elements for an effective damage prevention program, and establishes a grant program to incentivize states to adopt and implement a comprehensive program that meets the guidance.

In order to increase accountability among pipeline operators and their senior executives, the law required the certification and signature of annual and semi-annual pipeline integrity management program performance reports by a senior executive officer of the company operating the pipeline. In addition, the Act increased transparency by requiring monthly public summaries of all gas and hazardous liquid pipeline enforcement actions taken by the DOT, and required the Secretary to review incident reporting requirements for operators of natural gas pipelines to ensure that the data collected is accurate.

It has been more than 18 months since enactment of the PIPES Act, and although most of the statutory mandates contained in the Act were to have been implemented by December 2007, many of them have not. For example, in the wake of the British Petroleum pipeline failures in Alaska, Congress required PHMSA to issue a final rule by December 31, 2007 that would subject all low-stress hazardous liquid pipelines to the same standards and regulations as other hazardous liquid pipelines. Contrary to Congressional intent, PHMSA decided to pursue a two-phased approach to meet the mandate: regulate rural low-stress hazardous liquid pipelines affecting Unusually Sensitive Areas ("USAs") in an initial rulemaking process and use that rulemaking process to collect data PHMSA claims they need before they issue a Notice of Proposed Rulemaking ("NPRM"), known as Phase II, pertaining to rural low-stress hazardous liquid pipelines outside USAs. The Final Rule covering low-stress hazardous liquid pipelines affecting USAs was not issued until June 3, 2008. A date for issuance of an NPRM on Phase II is unknown.

In addition to low-stress pipelines, PHMSA has failed to implement the Technical Assistance Grant program; issue a final rule prescribing minimum standards for integrity management programs for distribution pipelines and the use of excess flow valves; issue a notice of proposed rulemaking (NPRM), much less a final rule as mandated, requiring pipeline operators to develop and implement a human factors management plan designed to reduce risks associated with human factors, including fatigue; issue an NPRM (final rule mandated) implementing the National Transportation Safety Board recommendations on Supervisory Control and Data Acquisition; and issue a host of studies required in the PIPES Act. A chart detailing the status of all the directives included in the law is attached to this memo.

On the security side, the PIPES Act required the Inspector General of the Department of Transportation ("DOT IG") to conduct an assessment of the actions taken to implement the annex to the memorandum of understanding between the Department of Transportation and the Department of Homeland Security relating to pipeline security.

On May 21, 2008, the DOT IG released the results of the assessment, entitled "Actions Needed to Enhance Pipeline Security," which found that PHMSA and the Transportation Security Administration ("TSA") have taken initial steps toward formulating an action plan to implement the provisions of the annex; however, further actions are needed as the current situation is far from an "end state" for enhancing the security of the Nation's pipeline system.

The DOT IG recommended that PHMSA collaborate with TSA to complete the following actions: (1) finalize the action plan for implementing the annex provisions and program elements and effectively execute the action plan, (2) amend the annex to clearly delineate the roles and responsibilities of PHMSA and TSA in overseeing and enforcing security regulations for liquid natural gas operators, and (3) maximize the strategy used to assess pipeline operators' security plans

and guidance to ensure effective and timely execution of congressional mandates in the Implementing Recommendations of the 9/11 Commission Act of 2007.

The DOT IG will be at the hearing to testify on the report; PHMSA and TSA will also comment on the report and discuss their roles and responsibilities with respect to security.

EXPECTED WITNESSES

The Honorable Carl T. Johnson
Administrator
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation

The Honorable Calvin L. Scovel III
Inspector General
U.S. Department of Transportation

Mr. John Sammon
Assistant Administrator for Transportation Sector Network Management
Transportation Security Administration
U.S. Department of Homeland Security