

**House Committee on Energy and Commerce**  
**Subcommittee on Energy**  
**Hearing: “The State of Pipeline Safety and Security in America”**  
**May 1, 2019**  
**Questions for the Record**

**The Honorable Howard "Skip" Elliott**  
**Administrator, Pipeline and Hazardous Materials Safety Administration**

**The Honorable Fred Upton (R-MI)**

***Question 1.*** You stated in your testimony that PHMSA has seven of 42 mandates remaining from the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011; and four of 19 mandates remaining from the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016. You stated further that completing rulemakings takes time simply because it is an interactive process that is designed to encourage maximum participation by all stakeholders, thus ensuring comprehensive rules that protect the public and stand up to cost/benefit scrutiny.

**a. What are the main drivers behind the pace of PHMSA’s rulemakings?**

**PHMSA Response:** PHMSA’s rulemaking process is designed to ensure PHMSA regulations account for known safety issues, technical feasibility, and cost effectiveness. Therefore, the rulemaking process takes time because it encourages maximum participation, thus ensuring comprehensive rules that protect the public, and standup to cost-benefit scrutiny.

PHMSA continues to make progress on completing rulemaking mandates and has focused on addressing mandates that provide the greatest level of safety. PHMSA’s Gas Pipeline Advisory Committee (GPAC) was originally scheduled to review the gas gathering rule and provide their recommendations on the rulemaking during scheduled meetings that had been scheduled on January 8-10, 2019. Unfortunately, the lapse in funding and the 35-day federal government shutdown forced the postponement of the January meetings. The meetings were rescheduled for June 25-26, 2019 and the GPAC has now reviewed and provided recommendations on the proposed rule.

**b. Does the statutory requirement to conduct a risk assessment, including identifying the costs and benefits associated with a proposed standard, improve the quality of PHMSA’s regulations?**

**PHMSA Response:** PHMSA’s statutory cost-benefit analysis requirement for pipeline rulemaking has been in place for almost 25 years. PHMSA complies with the statutory 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.

PHMSA analyzes the costs and benefits of each pipeline safety rulemaking as part of its effort to comply with the Pipeline Safety Laws, two Executive Orders, and a DOT Order on Policies and Procedures for Rulemakings. The outcome is the approval of high-quality regulations that are effective and cost-benefit justified.

**c. Would amending the statute by striking the requirement to identify the costs and benefits associated with a proposed standard speed the pace of rulemakings?**

**PHMSA Response:** 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, which separately require a comparison of proposed courses of action in terms of the projected economic impact of a proposed regulation. The absence of a strong economic analysis could result in increased scrutiny of rulemakings by stakeholders and the affected public – possibly culminating in legal actions challenging the proposed PHMSA action (or inaction), delaying a final rulemaking until the legal process initiated is resolved. In short, an effective cost-benefit analysis serves as a powerful tool to guard against frivolous or hasty rulemaking decisions as well as unwanted and potentially costly litigation.

**d. Would amending the statute by inserting a new mandamus clause that encourages citizen-suits speed the pace of rulemakings?**

**PHMSA Response:** An amendment to the statute is unnecessary, as there already exists a legal framework by which any person adversely affected by PHMSA’s inaction 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 or unreasonably delayed,” which is the same type of relief sought under mandamus.

**Question 2. Section 60121 of the Pipeline Safety Act already includes a citizen-suit provision, which provides a private right of action for persons to bring civil suits in Federal court, seeking injunctive relief against other persons, including the U.S. government, for “a violation of [the Act] or a regulation prescribed or order issued under [the Act].” Congress intended this citizen-suit provision to assist PHMSA in its enforcement and compliance activities by authorizing suits alleging substantive statutory or regulatory violations.**

**a. Please describe the multiple avenues available for judicial review of PHMSA’s interpretation of the pipeline safety statute.**

**PHMSA Response:** Any adversely affected person may seek judicial review of a final agency action taken by PHMSA pursuant to federal law under 49 U.S.C. § 60119, which provides in pertinent part:

*(a) Review of Regulations, Orders, and Other Final Agency Actions. (1)  
Except as provided in subsection (b) of this section, a person adversely affected by a regulation prescribed under this chapter or an order issued*

*under this chapter may apply for review of the regulation or order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 89 days after the regulation is prescribed or order is issued. The clerk of the court immediately shall send a copy of the petition to the Secretary of Transportation.*

Under the Administrative Procedure Act (APA), an agency “action” is defined as “the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. §551(13). As it relates to PHMSA, the judicial review provision potentially applies to multiple types of final agency actions including a final regulation; a denial of a petition for rulemaking; and a final administrative order such as a Final Order, a Compliance Order, a Corrective Action Order, a Safety Order, or an Emergency Order; or a grant or denial of a regulatory waiver or special permit.

**b. What are the potential implications of amending the statute to expand the citizen-suit provisions to include mandamus relief against PHMSA for failing to perform a non-discretionary act or duty?**

**PHMSA Response:** Including mandamus relief is unnecessary, as there already exists a legal framework by which any person adversely affected by PHMSA’s inaction 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 or unreasonably delayed,” which is the same type of relief sought under mandamus. In fact, there have already been occasions when persons have sought judicial review of PHMSA inaction under this provision. Adding additional mandamus relief provisions that encourage more law suits against PHMSA will unnecessarily result in a diversion of PHMSA’s limited resources to defend against those actions, rather than continuing our focus on the completion of outstanding rulemakings.

### **The Honorable Richard Hudson (R-NC)**

**Question 1. Thank you for being here today as we examine ways to increase the safety of our constituents and all Americans. While pipelines are the safest means of energy transportation, unfortunately, there are instances of failure. In these moments, it is critical our first responders are trained and prepared to handle these dangerous situations. Back home in North Carolina, some local and small fire stations do not have the budget to send their first responders to specific emergency pipeline safety training. Last year we had over 70 emergency responders take free online classes to receive pipeline emergency response training. By using technology, we are creating safer communities. In recent years' technology has been developed to internally scan pipelines to find issues early and detect leaks before they become a problem.**

**a. In order to keep up with the innovations being made, what is PHMSA doing to remove barriers for the adoption of new technologies?**

**PHMSA Response:** PHMSA encourages the use of special permits, which offer pipeline operators flexibility in using new technologies or operational methodologies to provide equal or greater levels of safety than can be achieved in lieu of the regulations. Further, more than half of PHMSA's rulemakings included in the 2018 Fall Agenda are responsive to stakeholder feedback, allowing the adoption of new technologies and reducing regulation without impacting safety. PHMSA published a final rule regarding the use of plastic pipe with annual cost savings of approximately \$32 million while allowing pipeline operators to use additional new technologies for safer plastic pipelines when replacing older lines or building new ones. In addition, PHMSA has submitted for review under EO 12866 a notice of proposed rulemaking (NPRM) titled "Amendments to Parts 192 and 195 to require Valve Installation and Minimum Rupture Detection Standards." PHMSA believes that certain provisions in the NPRM will help foster the development of leak detection technology and may help drive operators to make decisions to improve the capability of their current leak detection systems to detect non-rupture events.

**The Honorable Bill Flores (R-TX)**

***Question 1.*** I am concerned regarding some recent attacks on pipelines that raise important safety concerns. Protest activities that create safety hazards, and/or environmental damage, must not be tolerated. In October 2016, anti-pipeline activists staged simultaneous attacks on 5 crude oil pipelines in 4 states along the U.S.-Canadian border. These assailants targeted valve stations maintained by pipeline operators. These valves have important, specific uses to stop the flow of product through the pipeline, such as isolating a pipeline segment during an emergency, or in order to conduct maintenance. 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 a round 15 percent of daily U.S. consumption. The Pipeline Safety Trust, testifying on the second panel of this hearing, said at the time of the valve turnings that "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." Since 2016, additional attacks have happened in the states of Iowa, Minnesota, South Dakota, and Washington.

**a.** Does PHMSA consider valve-turnings, gunfire, or torch attacks on pipelines under construction dangerous activities that endanger people and the environment?

**PHMSA Response:** Yes. Undetected damage to a pipeline that occurs can cause pipeline failures that endanger people and the environment years after the damage is made by weakening the integrity of the pipe. Bullet strikes and heating of metals change the properties and strength of steel or damage protective coatings that help prevent corrosion.

**b.** Would PHMSA support closing current loopholes in federal pipeline law to deter dangerous attacks on pipelines?

**PHMSA Response:** Yes. PHMSA supports safeguarding the nation's pipeline infrastructure and closing any loopholes in federal pipeline law to deter dangerous attacks on pipelines.

To illustrate our commitment, PHMSA, the lead agency for pipeline safety, coordinated closely with the Department of Homeland Security (DHS)/Transportation Safety Administration (TSA), the lead agency for pipeline security, and Department of Energy to publish an advisory bulletin titled Safeguarding and Securing Pipelines from Unauthorized Access.

The advisory bulletin was issued following coordinated efforts by environmental extremists in October 2016 to shut down pipelines transporting oil from Canada. The incidents and advisory bulletin, which encouraged innovative security measures, precipitated the development of advanced valve locks that have resisted valve tampering.

Further, PHMSA frequently provides necessary pipeline related information to law enforcement and to the Intelligence Community when there is a pipeline failure. PHMSA also participates in the Law Enforcement Working group under the Oil and Natural Gas Sector Coordinating Council to ensure industry and federal partners are aware of their respective roles and responsibilities during a security incident.

**The Honorable Cathy McMorris Rodgers (R-WA)**

***Question 1. I would like to talk about PHMSA's procedures for determining the potential risks posed by a pipeline. More specifically, PHMSA's class location requirements for pipelines located in areas where we've seen recent population growth.***

**a. How does PHMSA treat pipelines in highly populated areas vs. rural areas with less people and development?**

**PHMSA Response:** PHMSA's pipeline safety regulations include integrity management programs to ensure operators are adequately identifying and addressing the greatest risks. Under integrity management, operators are required to conduct integrity assessments of gas transmission and hazardous liquid pipeline systems in high consequence areas and apply lessons learned across their entire system.

Gas transmission pipelines are divided into classes from 1 (rural areas) to 4 (densely populated, high-rise areas) that are based on the number of buildings or dwellings for human occupancy in the area. This concept is to provide safety to people from the effects of a high-pressure natural gas pipeline leak or rupture that could explode or catch on fire. PHMSA uses class locations in 49 CFR part 192 to implement a graded approach in many areas that provides more conservative safety margins and more stringent safety standards commensurate with the potential consequences based on population density near the pipeline. When crafting the natural gas regulations, PHMSA determined that these more stringent standards were necessary because a greater number of people in proximity to the pipeline substantially increases the probabilities of personal injury and property damage in the event of an accident. At the same time, the external stresses, the potential for damage from third parties, and other factors that contribute to accidents increase along with the population; consequently, additional protective measures are often needed in areas with greater concentrations of population.

If an area around a pipeline experiences population growth to where the pipeline's class location increases or the area becomes a high-consequence area, the pipeline is subject to additional safety requirements.

For hazardous liquid operators, the provisions for integrity management in high consequence areas are specified in 49 CFR 195.452. Integrity management consists of multiple components, including adopting procedures and processes to identify High Consequence Areas (HCAs), which are areas with the greatest population density and environmental sensitivity; determining likely threats to the pipeline within the HCA; evaluating the physical integrity of the pipe within the HCA; and repairing or remediating any pipeline defects found.

Because these procedures and processes are complex and interconnected, effective implementation of an Integrity Management program relies on continual evaluation and data integration.

**b. I understand there has been ongoing discussion about this since at least 2013. What's the current status of PHMSA's efforts to review class location requirements for pipelines?**

**PHMSA Response:** PHMSA published an advanced notice of proposed rulemaking (ANPRM) on July 30, 2018, relative to the issue of class location change requirements and potential alternatives. PHMSA is currently drafting a notice of proposed rulemaking (NPRM) based on the feedback received from the ANPRM, and we anticipate publishing the NPRM in November this year.

**c. Would you commit to working with Congress on this issue, so we can be assured that PHMSA is taking this matter seriously?**

**PHMSA Response:** Yes. PHMSA takes all pipeline and hazardous materials matters seriously and will continue to work with Congress to improve safety.