

Questions Submitted for the Record
Subcommittee on Energy, Climate, and Grid Security
Committee on Energy and Commerce
Subcommittee Hearing on “Fueling America’s Economy: Legislation to Improve Safety and
Expand U.S. Pipeline Infrastructure”
Thursday, January 18, 2024

The Honorable Michael C. Burgess, M.D.

1. I introduced H.R. 829, the Promoting Interagency Coordination for Review of National Gas Pipelines Act to authorize the Federal Energy Regulatory Commission (FERC) to act as lead agency in coordinating the environmental review process of natural gas pipeline projects.

a. Do you believe that streamlining the NEPA process will ensure the safe transportation of natural gas?

Response: Congress established PHMSA as a regulatory agency, with a primary focus on developing, proposing, and implementing regulatory policy initiatives and regulations, and administering a national pipeline safety inspection and enforcement program. National Environmental Policy Act (NEPA) reviews associated with evaluation of applications for certificates for construction, extension, or abandonment of natural gas pipeline projects (which are the subject of H.R. 829) are the primary responsibility of FERC rather than PHMSA. However, with the passage of the Bipartisan Infrastructure Law, PHMSA was tasked with establishing the Natural Gas Distribution Infrastructure Safety and Modernization grant program, a first of its kind infrastructure grant program for PHMSA. PHMSA expedited the environmental review for this grant program through a programmatic environmental assessment that analyzed common effects associated with projects covered by this program, allowing grant recipients to complete their site-specific analyses more quickly. Consistent with the White House Council on Environmental Quality’s recently issued Bipartisan Permitting Implementation Rule, PHMSA is developing NEPA implementing procedures that will ensure effective and efficient environmental reviews, ensure full and fair public engagement, and promote sound decision making that is grounded in science, including consideration of relevant environmental, climate change, and environmental justice effects.

b. Do you believe that pipelines are the safest way to transport natural gas?

Response: By volume, data suggests natural gas can be transported more safely and efficiently via pipeline than other modes of transportation—however, when a pipeline fails, the severity of damages may be greater than damages that result from a failure of other modes of transportation.

- c. **If not, what do you believe is the safest way to transport natural gas?**

Response: The U.S. Department of Transportation is committed to ensuring that the high volumes of energy products the nation uses every day are transported safely, regardless of which mode of transportation is used.

2. **The Pipeline and Hazardous Materials Safety Administration has not had a confirmed administrator for more than three years, a record vacancy for this position.**

- a. **Why has a confirmed administrator not yet been appointed and confirmed to the position?**

Response: The Secretary of Transportation and the Administration have confidence in PHMSA's current leadership, which has been one of the most productive in advancing new safety requirements in the agency's history. I am proud to lead the dedicated workforce at PHMSA all across the country who have devoted their professional lives to promoting safety and protecting all communities. If and when the White House nominates an Administrator, we are hopeful that the Senate will act swiftly to confirm such a nominee to continue on this important work.

The Honorable Tim Walberg

1. **PHMSA held a GPAC meeting in November 2023 that was intended to address both the Leak Detection and Repair NPRM and the Class Location NPRM, but did not have time to cover the Class Location. You have publicly stated that PHMSA anticipates publishing a final rule by the end of 2024. Is the agency still on track to complete the rule this year given the delayed GPAC discussion?**

Response: The GPAC completed its review of the Class Location NPRM during the March 2024 GPAC meeting. During the meeting, industry representatives requested to extend the comment period for the GPAC proceedings relative to the Class Location NPRM for 120 days. PHMSA's decision to extend the comment period to fulfill the stakeholders' request will affect the current timing of completing a final rule.

The Honorable Troy Balderson

1. **Can PHMSA provide an updated timeline for issuing a final class location rule?**

Response: Pursuant to the 2020 PIPES Act, PHMSA will continue to update timelines for these rules on our website: [PIPES Act Web Chart | PHMSA \(dot.gov\)](#).

2. **If the GPAC is unable to complete consideration of the class location NPRM at the next GPAC meeting scheduled for March 25-29, how soon can PHMSA plan and hold another GPAC meeting to advance this critical rulemaking?**

Response: GPAC members completed their review of the Class Location NPRM during the March GPAC meeting.

3. **Deputy Administrator Brown, you testified at the hearing that PHMSA intends to establish a working group soon to review Maximum Allowable Operating Pressure (MAOP) testing records for older pipelines.**

- a. **Does the agency have a status update for when the working group will commence?**

Response: The working group met in April in Houston, Texas and had a productive meeting. The work continues.

- b. **And how long does PHMSA anticipate that it will take for the group to complete its task?**

Response: The first meeting was constructive—identifying areas of attention that are necessary and appropriate data that can inform the group’s work estimated time horizons. The group will establish a timeline once this process is completed.

4. **Is the agency looking to institute any enforcement discretions related to MAOP testing records? If so, can you please provide a timeline for when they will be implemented and for how long?**

Response: PHMSA uses its discretion in enforcement on an ongoing basis—with a focus on safety.

5. **We understand that PHMSA issued an interpretation letter related to MAOP testing records that is problematic and conflicts with existing PHMSA regulations.**

- a. **Can you please share if the agency intends to remove or modify this letter to account for this discrepancy?**

Response: PHMSA issued a letter of interpretation related to MAOP testing records on October 5, 2022. It may be viewed on PHMSA’s website at <https://www.phmsa.dot.gov/regulations/title49/interp/pi-22-0014>.

6. **We have also been made aware that there are various instances where PHMSA audits can take months to complete when they are scheduled to be completed in one week.**

- a. **Can you please explain why this occurs?**

Response: Pipeline inspections are rarely, if ever, scheduled to be completed in one week. Some companies operate only a few hundred miles of pipeline and others many thousands of miles. A typical pipeline inspection includes evaluation of hundreds of pipeline miles and associated facilities, hundreds of pages of procedures and multiple years of records. Inspecting this quantity of facilities and materials generally occur over many weeks. In consideration of the impact to company staff, PHMSA will often spread the inspection weeks out over multiple months. For example, PHMSA may schedule a one-week inspection along an operator’s right-of-way and then return a month later for a one-week examination

of the operator's records at its office. Additionally, if an inspector identifies safety concerns, they may request additional information to better understand the circumstances. If this occurs, a scheduled inspection timeframe may be extended.

b. And what can be done to ensure that audits are completed efficiently going forward?

Response: PHMSA crafts each inspection to focus on the known risks of the pipeline based on the company and pipeline history—as well as other risk-based factors. This means that all other things being equal, pipeline companies with better safety and compliance histories, as well as those that are situated in lower risk areas (e.g., not near schools or population centers) may have fewer items to be evaluated during an inspection and could potentially experience a shorter inspection time.

7. Ensuring consistent auditing and understanding of the code is important to avoid ambiguity, misinterpretation, and confusion during PHMSA audits.

a. How is PHMSA working to ensure that PHMSA inspectors are objectively and consistently auditing to the code language as opposed to incorporating their opinions or interpretations of the code?

Response: PHMSA's Office of Pipeline Safety (OPS) has several layers of training and development to ensure consistency in our inspections. The first layer is employee orientation which occurs over the first few months of employment with OPS. The employee's supervisor and the employee review the relevant policies and procedures within OPS. This orientation gives good entry into OPS's inspection program. The second layer is the formal classroom training provided by PHMSA's Training & Qualification Division (TQ) located in Oklahoma City, OK. All federal inspectors are required to complete this extensive training program. Depending on the inspector's assigned area they would complete up to 22 in person courses as well as 28 web-based trainings. This training program is completed over several years.

The third layer is On the Job Training (OJT). This is administrated in the regions and is where a new employee participates in multiple inspections with senior staff so the new employee can develop experience in a live setting. Senior staff lead inspections, answer new employee questions, and guide them through the inspection process. At the end of the process, a supervisor attends an inspection led by the "new" inspector to validate whether they adequately perform the inspection and adhere to OPS's policies and regulations. In 2023, OPS initiated an update to the OJT program to ensure more consistency, a better evaluation process, and improved documentation. This program is expected to be pilot tested in 2024 and fully implemented in 2025.

OPS has other checks and balances integrated into our inspection program to ensure a consistent approach. Should an inspection result in an enforcement case, each case is reviewed by a regional attorney located in PHMSA's Chief Counsel's Office for compliance with the regulations and law. In addition, Field Operations Management conducts a monthly review of Final Orders. These discussions can identify novel approaches to enforcement and where an inconsistency may have occurred.

The Honorable August Pfluger

1. **PHMSA is far behind schedule in completing the idled pipe rulemaking, which, as you know, was required by Congress to be promulgated by the end of December 2022. PHMSA should not continue to regulate idled and fully active pipelines the same - idled pipes do not actively carry hazardous materials, and they are disconnected from sources that allow for transporting hazardous materials, so the regulations should be appropriately tailored to reflect the reduced risk of incident. Importantly, regulating idled pipelines the same as active pipelines means PHMSA must direct its limited resources here when the funds could be better used implementing other regulations.**
 - a. **Is PHMSA on track to publish a proposed rule on idled pipelines by the first quarter of 2024?**

Response: Pipelines not currently in operation but that may be used in the future are sometimes informally referred to as “idled,” “inactive,” or “decommissioned.” These pipelines may be shut down, but they may still contain hazardous liquids or gas. Some pipelines do not operate for short periods of time such as weeks or months. Other pipelines do not operate for years. If a pipeline is not properly abandoned and may be used in the future for transportation of hazardous liquid or gas, PHMSA regulations consider it an active pipeline. Owners and operators of pipelines that are not actively transporting products but contain hazardous liquids and gas must comply with all relevant safety requirements, including periodic maintenance, integrity management assessments, damage prevention, and public awareness programs.

PHMSA is aware that some owners and operators may properly purge a pipeline of combustibles without abandonment because of an expectation to later continue using the pipeline in hazardous materials transportation. A purged pipeline presents less immediate risks but presents comparable future risks when the pipeline is reactivated to transport hazardous materials. Degradation of such a pipeline can occur, but it is not likely to result in immediate significant safety impacts to people, property, or the environment. PHMSA may accept deferral of certain activities for purged pipelines through consultation with the appropriate PHMSA region director. All deferred activities must be completed prior to, or as part of, any later return-to-service. Pipeline owners and operators are fully responsible for the safety of their pipeline facilities at all times and during all operational statuses.

Additionally, PHMSA’s PIPES Act 2020 Web Chart will continue to include updates on the progress of this rulemaking: [PIPES Act Web Chart | PHMSA \(dot.gov\)](#).

The Honorable John P. Sarbanes

1. **As we consider reauthorization of PHMSA's pipeline safety authorities, we must take great care to ensure we are not replicating, or even worsening, problems with the current authorizing language. I'm very concerned that the Majority's draft bill has very little to do with pipeline safety and in several ways actually threatens PHMSA's ability to effectively regulate the industry. Pipeline safety regulation is one of the only health, safety and environmental**

programs that requires an additional cost-benefit analysis for rulemaking. Can you please describe what PHMSA's current statutory cost-benefit requirements are and how those interact with OMB's cost-benefit examinations?

Response: PHMSA's pipeline safety statute contains an explicit requirement for cost-benefit analysis for all proposed and final pipeline safety rulemakings (see 49 U.S.C. 60102(b)(5)): "Except where otherwise required by statute, the Secretary shall propose or issue a standard under this chapter only upon a reasoned determination that the benefits, including safety and environmental benefits, of the intended standard justify its costs." That cost-benefit analysis (or "risk assessment" as described in 49 U.S.C. 60102(b)(3)) compares reasonably identifiable or estimated benefits and costs expected to result from the implementation of the rulemaking. It includes identifying regulatory and nonregulatory options that PHMSA considered, a detailed explanation of the reasons for the selection of the proposed or final rulemaking, a brief explanation of the reasons the alternative options were not selected, and technical data or other information upon which the risk assessment is based. PHMSA is required to submit any risk assessment information to the Technical Safety Standards Committee(s) who serve as peer review panels and make it available to the public for reviews. The agency may revise the risk assessment and the rulemaking itself before formally issuing the proposed or final rulemaking based on inputs and recommendations received.

Similarly, OMB guidance—specifically, Executive Order 12866 (as amended by Executive Order 14094) and OMB's Circular A-4—requires PHMSA to conduct a regulatory analysis (cost-benefit analysis) to evaluate the likely consequences of any proposed or final rulemaking that OMB determines is "significant" as defined in Section 3(f) of Executive Order 12866 (as amended). That cost-benefit analysis assesses the costs, benefits, and other impacts of any rulemaking using quantifiable and qualitative measures. Executive Order 12866 (as amended) states that agencies shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

While the content of cost-benefit analyses for PHMSA rulemakings discussed above are largely the same, the scope of application of the pipeline safety statute's cost-benefit analysis requirements is broader than that of OMB guidance. Specifically, the pipeline safety statute requires cost benefit analyses for all proposed and final pipeline safety rulemakings; in contrast, OMB Circular A-4 only requires a full regulatory impact analysis (RIA) if OMB has determined that a proposed or final rule is "significant" pursuant to Executive Order 12866 (as amended). As a matter of practice, though, PHMSA (and other DOT operating administrations) perform cost-benefit and other economic analyses for most proposed and final rulemakings. These analyses tend to scale with the complexity of the proposed or final rulemaking.

- 2. Redundant cost-benefit analysis slows down actions that could be promoting public and environmental safety and can allow industry to use spurious arguments about cost-benefit analyses to try and slow down rules they don't support. Right now, for instance, they are invoking cost-benefit arguments to impede the already far-too-long delayed implementation of the leak detection rule that Congress ordered PHMSA to carry out over three years ago. In your experience, how severely does the cost-benefit requirement delay action at PHMSA and how does it introduce potential litigation risks against PHMSA's standards?**

Response: As outlined in Circular A-4 (OMB's guidance), quantifying and monetizing all benefits and costs can be difficult due to limited information on potential impacts of proposed actions to regulated entities. Varying compliance levels of those regulated entities and other uncertainties that unfold over a long period of time because of changing economic and technological factors contribute to this difficulty. The guidance acknowledges these challenges and encourages agencies to account for important non-monetized and unquantified effects using qualitative measures when deciding what course of action to pursue.

Depending on the nature and complexity of regulatory actions, conducting high-quality analysis takes a lot of time and effort to reasonably define the benchmark, develop the analytical framework, gather data and information, consult with experts, and solicit inputs from affected entities and stakeholders.

- 3. Section 2 of the draft bill discussed in the hearing is particularly troubling because it would further exacerbate these issues by limiting the costs and benefits that must be considered in PHMSA's analysis to "safety and economic" factors within the United States. In doing so, the draft bill also excludes consideration of environmental costs and benefits in this calculation. Would this requirement to prioritize economic factors and ignore environmental factors in a cost-benefit analysis of safety standards help or hinder PHMSA's ability to efficiently protect the safe operation of pipelines and minimize the dangers to American communities?**

Response: In pipeline operations, safety risks and environmental risks are often intertwined. Gas leaks and hazardous liquids spills from pipeline systems are indicative of underlying safety risks that could potentially lead to incidents, and that also have adverse environmental effects. Pipeline operators are required to report to PHMSA, separately, incidents (including intentional and unintentional releases), leaks/spills, and safety-related conditions. These reports help PHMSA assess new and emerging safety and environmental risks, and proactively address them using routine inspections and rulemakings. A cost-benefit analysis should reflect all costs and benefits pertinent to a regulatory action in order to help the agency make a reasonable determination. Prioritizing some factors and ignoring or deprioritizing others would hinder PHMSA's ability to efficiently protect the safe operation of pipelines and minimize the dangers to American communities.

Human safety and environmental quality are closely related concepts that cannot be fully separated. The National Environmental Policy Act (NEPA) requires agencies to take a hard look at the reasonably foreseeable effects of their actions on the "human environment," which regulations issued by the White House Council on Environmental Quality define as "the natural and physical environmental and the relationship of present and future generations of Americans with that environment" (40 CFR 1508.1). When an agency such as PHMSA completes an environmental review under NEPA, many of the environmental effects that it considers are themselves risks to human safety, such as risks of explosions or toxic releases. Other adverse environmental effects that it considers can result in risks to human health and safety, such as effects on air quality or climate-related effects. Finally, other adverse environmental effects, such as impacts to species or their habitat, can be leading indicators of long-term effects on human health and safety, and can affect human health by affecting communities' cultural, economic, and spiritual ways of life. For these reasons, environmental effects cannot be

separated from effects on human health and safety. Environmental factors in a cost-benefit analysis such as calculating the social cost of carbon can help quantify and realize the benefits of a particular rulemaking on the human environment. Additionally, considering environmental justice helps agencies understand how the costs and benefits of an action are distributed throughout society, and help ensure that no American, regardless of race or income, experiences disproportionate and adverse effects from government actions. Consideration of these factors is essential to the safe operation of pipelines and to minimizing the dangers to American communities because of how interrelated they are. By foregoing them, it is difficult to achieve these goals.

And lastly, the essential elements of agency decision-making under NEPA and the Administrative Procedure Act include an assessment of the social, economic, and environmental (human and natural) impacts of a proposed action or project. The NEPA process results in decisions that address multiple concerns and requirements. The NEPA process allows transportation officials to make decisions that balance engineering and transportation needs with social, economic, and environmental factors. During the process, a wide range of partners including the public, businesses, interest groups, and agencies at all levels of government provide input into the proposed action and environmental decisions. This process is essential to ensuring that agencies make good decisions.