IMPLEMENTATION OF THE PIPELINE INSPECTION, PROTECTION, ENFORCEMENT, AND SAFETY ACT OF 2006

(110–147)

HEARING

BEFORE THE

SUBCOMMITTEE ON
RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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June 24, 2008

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 overseas 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

Pipeline Inspection, Protection, Enforcement, and Safety (PIPES) Act of 2006 – Implementation Status as of June 2008

Section	Mandate	Deadline	Current Status
1 - Short Title			
2 - Damage Prevention	This section provides PHMSA with new federal civil authority to enforce one-call laws against excavators and pipeline owners and operators in states that do not have adequate enforcement. This section 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. Further, the section authorizes the Secretary to make grants to any organization or entity for the development of technologies that will facilitate the prevention of pipeline damage caused by demolition, excavation, tunneling, or construction activities, with an emphasis on wireless and global positioning technologies having potential for use in connection with notification systems and underground facility locating and marking services. The Secretary is prohibited from issuing these grants until competitive procedures for awarding the community technical assistance grants (under section 5) and criteria for selecting such grant recipients are established.	None provided	PHMSA has been educating States on PIPES Act priorities and the importance of establishing an effective damage prevention program. The grant competition to incentivize states to adopt and implement such a program has been completed. Eighteen states applied for grants; eleven were issued and five will be issued in July. PHMSA established criteria for the damage prevention technology grants. The grants, however, cannot be awarded until competitive procedures for awarding the community technical assistance grants (under section 5) and criteria for selecting such grant recipients are established. That has not yet been completed.
3 - Public Education and Awareness	This section authorizes $1 million for FY 2007 and 2008 for the Secretary to issue grants for promoting public education and awareness with respect to the 811 national excavation damage prevention phone	None provided	The grant was provided to the Common Ground Alliance. The national 811 advertising campaign was launched on May 1, 2007. PHMSA celebrated the first anniversary of 811 last month

Section	Mandate	Deadline	Current Status
	number.		at the National Press Club.
4 - Low-Stress Pipelines	This section directs the Secretary to issue regulations subjecting low-stress hazardous liquid pipelines to the same standards and regulations as other hazardous liquid pipelines with limited exceptions for pipelines regulated by the U.S. Coast Guard and certain short-length pipelines serving refining, manufacturing, or truck, rail, or vessel terminal facilities. Implementation of the standards and regulatory requirements may be phased-in.	Final Rule Due December 31, 2007	Failed to meet the deadline. 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.
5 – Technical Assistance Grants	The section reauthorizes a program for making technical assistance grants to local communities relating to the safety of pipeline facilities in those communities. The section requires the Secretary to establish competitive procedures for awarding grants under this section and criteria for selecting grant recipients before issuing Damage Prevention Technology grants under section 1. The first three grants awarded under this section must be $25,000 demonstration grants for the purpose of demonstrating and evaluating the utility of grants under this section.	Authorized through FY 2010	These technical assistance grants were first authorized in the Pipeline Safety Improvement Act of 2002; yet PHMSA just developed the criteria for issuing the grants. The competitive procedures for awarding the grants have not been developed, and no grants have been issued. Concerns have been raised about the draft criteria PHMSA has circulated. The concerns focus on the fact that the draft criteria require local communities to get a pipeline company to co-sponsor the grant; require applicants to "produce an assessment of the risks" that a pipeline poses to the community or the community to the pipeline; and require that an

Section	Mandate	Deadline	Current Status
			"applicant's project scope include a high consequence geographic area."
6 - Enforcement transparency	This section requires the Secretary to provide monthly updated summaries to the public of all gas and hazardous liquid pipeline enforcement actions, which must identify the operator involved in the enforcement activity, the type of alleged violation, the penalty or penalties proposed, any changes in case status since the previous summary, the final assessment amount of each penalty, and the reasons for a reduction the proposed penalty, if appropriate. This section also requires the Secretary to provide a mechanism for an operator named in an enforcement action to make information, explanations, or documents it believes are responsive to the enforcement action available to the public.	December 31, 2007	Met the deadline. PHMSA launched a system in May 2007 for granting web-based access to enforcement documents. It can be found at: http://primis.phmsa.dot.gov/comm/reports/enforce/Enforcement.html
7 - Direct Line Sales	This section eliminated the former exception of direct sales natural gas pipelines from the definition of an interstate gas pipeline facility. As a result, direct sales pipelines are now subject to Federal pipeline safety regulations and PHMSA is responsible for their regulatory oversight and enforcement.	None provided	PHMSA published an Advisory Bulletin to operators informing them of PIPES Act changes in jurisdiction on May 13, 2008, after extensive coordination with States.
8 – Petroleum Transportation Capacity and Regulatory Adequacy Study	This section requires the Secretaries of Transportation and Energy to conduct periodic analyses of the domestic transport of petroleum products by pipeline and identify areas where shortages or price disruptions may be caused by a pipeline failure. The section requires the Secretaries to submit a report to Congress setting forth their recommendations to reduce the likelihood of the shortages and price disruptions.	Final Report Due June 1, 2008	Failed to meet the deadline. A draft report was prepared and reviewed twice with the Department of Energy and the Transportation Security Administration. PHMSA is finalizing the report now; it is expected to be published in July 2008.
9 – Distribution Integrity	This section requires the Secretary to prescribe	Final Rule Due	Failed to meet the deadline. The notice of

Section	Mandate	Deadline	Current Status
Management Program Rulemaking and Excess Flow Valves	minimum standards for integrity management programs for distribution pipelines. The section also requires operators of natural gas distribution systems to install excess flow valves on single family residence service lines in certain circumstances.	December 31, 2007	proposed rulemaking was sent to the Federal Register June 20, 2008. PHMSA published an Advisory Bulletin for pipeline operators on the excess flow valve requirements contained in the PIPES Act in the Federal Register on June 5, 2008.
10 - Emergency Waivers	This section authorizes the Secretary to waive compliance with a pipeline safety regulation as long as the Secretary determines that (1) it is in the public interest to grant the waiver; (2) the waiver is not inconsistent with pipeline safety; and (3) the waiver is necessary to address an actual or impending emergency involving pipeline transportation, including an emergency caused by a natural or manmade disaster. The waiver is good for 60 days and may be renewed upon application to the Secretary only after notice and an opportunity for a hearing.	None provided	PHMSA published an Interim Final Rule in the Federal Register on March 28, 2008 which established the procedures PHMSA will follow in issuing safety orders and handling waivers, including emergency waivers.
11 - Restoration of Operations	This section allows the Secretary to advise, assist, and cooperate with heads of other departments and agencies to facilitate the restoration of pipeline operations that have been or are anticipated to become disrupted by manmade or natural disasters.	None provided	This section was self executing.
12 – Pipeline Control Room Management	This section requires operators of gas and hazardous liquid pipelines to develop, implement, and submit to the Secretary (for approval) a human factors management plan designed to reduce risks associated with human factors, including fatigue, in each control center for the pipeline. Each plan must include a maximum limit on the hours of service established by the operator for individuals employed as controllers	Final Rule Due June 1, 2008	Failed to meet the deadline. PHMSA expects to publish a Notice of Proposed Rulemaking in the Federal Register this month.

Section	Mandate	Deadline	Current Status
	in a control center for the pipeline.		
13 - Safety Orders	This section requires the Secretary to issue regulations providing that if the Secretary determines that a pipeline facility has a condition that poses a pipeline integrity risk to public safety, property, or the environment, the Secretary may order the operator of the facility to take necessary corrective action, including physical inspection, testing, repair, or other appropriate action, to remedy that condition.	Final Rule Due December 31, 2007	Failed to meet the deadline. PHMSA published an Interim Final Rule in the Federal Register on March 28, 2008 which established the procedures PHMSA will follow in issuing safety orders and handling waivers, including emergency waivers.
14 - Integrity Program Enforcement	This section authorizes the Secretary to conduct enforcement proceedings if the Secretary determines that a risk analysis or integrity management program does not comply with pipeline safety regulations, has not been adequately implemented, or is inadequate for the safe operation of a pipeline facility.	None provided	This was a technical clarification to the statute. No rule change was required.
15 - Incident Reporting	This section requires the Secretary to review incident reporting requirements for gas pipeline operators and modify the reporting criteria as appropriate to ensure that the incident data gathered accurately reflects incident trends over time.	December 31, 2007	Met the deadline. PHMSA modified the incident reporting criteria to ensure that the incident data gathered accurately reflects incident trends over time. A Federal Register notice seeking approval for additional information collection is expected to be published in July 2008.
16 – Senior Executive Signature of Integrity Mgmt Program Performance Reports	This section directs the Secretary to establish procedures requiring certification of annual and semiannual pipeline integrity management program performance reports by a senior executive officer of the pipeline operator.	None provided	An Advisory Notice to operators was issued on April 23, 2007.
17 - Cost Recovery for Design Reviews	This section allows the Secretary to charge fees for facility design safety reviews in connection with a proposal to construct, expand, or operate a liquefied natural gas pipeline facility.	None provided	PHMSA requested the authority to spend funds collected from the design safety reviews in the President's FY2009 budget request.
18 – Authorization of Appropriations/	This section authorizes appropriations for the pipeline safety program. It also authorizes the	Authorized through FY 2010	$1 million in grants is provided on an annual basis to the National Association of Fire

Section	Mandate	Deadline	Current Status
emergency response training grants/inspector staffing requirements	Secretary to establish a program for making grants to State, county, and local governments in high consequence areas for emergency response management, training, and technical assistance. The bill authorizes $10 million for the program for each of fiscal years 2007 through 2010. Further, this section requires the Secretary to ensure that the number of positions for pipeline inspection and enforcement personnel at PHMSA does not fall below 100 for FY 2007, 111 for FY 2008, 123 for FY 2009, and 135 for FY 2010.		Marshalls for emergency response training. PHMSA also conducts training workshops in every state. With respect to inspector staffing, the President requested funding for 102 FTEs in the FY2008 budget request – nine inspectors short of the level mandated in the PIPES Act. Congress funded 109 FTEs in FY2008 – two inspectors short of the level mandated in the PIPES Act. The President requested funding for 117 FTEs in the FY2009 budget request – five inspectors short of the level mandated in the PIPES Act.
19 - Implementation of NTSB Recommendations	This section requires the Secretary to issue standards that implement the following recommendations contained in the NTSB's report entitled "Supervisory Control and Data Acquisition (SCADA) in Liquid Pipelines" and adopted November 29, 2005: (1) Implementation of the American Petroleum Institute's Recommended Practice 165 for the use of graphics on the supervisory control and data acquisition screens; (2) Implementation of a standard for pipeline companies to review and audit alarms on monitoring equipment; and (3) implementation of standards for pipeline controller training that include simulator or noncomputerized simulations for controller recognition of abnormal pipeline operating conditions, in particular, leak events.	Final Rule Due June 1, 2008	Failed to meet the deadline. PHMSA expects to publish a Notice of Proposed Rulemaking in the Federal Register this month. It will be incorporated in the NPRM that will be issued for implementing section 12 (control room management).
20 - Accident Reporting Form	This section directs the Secretary to modify accident reporting forms to require gas and hazardous liquid operators to provide data related to controller fatigue.	December 31, 2007	Met the deadline. PHMSA modified the accident reporting forms to require gas and hazardous liquid operators to provide data

Section	Mandate	Deadline	Current Status
			related to controller fatigue. A Federal Register notice seeking approval for addition information collection is expected to be published in July 2008.
21 - Leak Detection Technology Study	This section requires the Secretary to submit to Congress a report on the effectiveness of leak detection systems utilized by operators of hazardous liquid pipelines.	Final Report Due December 31, 2007	The final report was sent to Congress on June 23, 2008.
22 - Corrosion Control Regulations	This section requires the Secretary to review the adequacy of Part 195 internal corrosion control regulations and report to Congress.	Final Report Due December 31, 2007	The final report was sent to Congress on June 23, 2008.
23 - Inspector General Report	This section requires the DOT Inspector General to conduct an assessment of the actions the DOT has taken in implementing the annex to the memorandum of understanding between the DOT and the Department of Homeland Security relating to pipeline security, and to transmit a report to Congress.	Final Report Due December 31, 2007	The DOT Inspector General (IG) issued the final report, entitled "Actions Needed to Enhance Pipeline Security, on May 21, 2008. The IG found that PHMSA and 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.
24 - Technical Assistance Program	This section authorizes the Secretary to award grants to universities with expertise in pipeline safety and security to establish a collaborative program to conduct pipeline safety and technical assistance programs. Reports to Congress on the programs are required if the grants are made.	March 31, 2009 for the universities to submit reports to the Secretary on the programs October 1, 2009 for the Secretary to transmit findings and recommendations to Congress	This program has not been funded by Congress.

Section	Mandate	Deadline	Current Status
25 – Natural Gas Pipelines	This section requires the Secretary to review and comment on a GAO report issued under section 14(d)(1) of the Pipeline Safety Improvement Act of 2002 and transmit to Congress any appropriate legislative recommendations necessary to implement the conclusions of that report.	60 days after enactment	The Secretary sent a letter to Congress on November 29, 2007 recommending that Congress amend 49 U.S.C. 60109(c)(3)(B) in the manner set forth in the Administration's 2006 pipeline reauthorization proposal to implement the conclusions of the GAO report on risk-based standards for pipeline reassessments.
26 - Corrosion Technology	This section allows the Secretary to conduct research, development, demonstration, and standardization activities related to corrosion detection.	None	This is an ongoing effort.

HEARING ON IMPLEMENTATION OF THE PIPELINE INSPECTION, PROTECTION, ENFORCEMENT, AND SAFETY ACT OF 2006

Wednesday, June 25, 2006

HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:20 a.m., in Room 2167, Rayburn House Office Building, the Honorable Corrine Brown [Chairwoman of the Subcommittee] presiding.

Ms. BROWN. Will the Subcommittee officially come to order, the Subcommittee on Railroads, Pipelines, and Hazardous Materials?

The Subcommittee is meeting today to hear testimony on Implementation of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006.

This will be the first hearing that the Subcommittee has held on pipeline safety since taking over jurisdiction on this issue at the beginning of the Congress.

One of the top priorities of the Committee when the Democrats took over was to expand the oversight role that was lacking, and allowing the Administration to go unchecked by Congress.

Nowhere is this oversight more necessary than the pipeline infrastructure in this Country, which transports billions of gallons of fuel, natural gas, and hazardous materials. This is a critical issue as we struggle to make our Nation's infrastructure safe from accidents and secure from attacks. It is also clear that pipeline accidents don't just impact the communities where they happen; they can impact the entire U.S. economy.

Every day in the U.S. millions of gallons of fuel and other hazardous liquids travel through 2.2 billion miles of pipeline that deliver these important commodities to local towns and businesses. In my home State of Florida, we have nearly 32,000 miles of pipelines, and as recently as November we had a pipeline accident that badly injured a teenager and forced the evacuation of 3,000 homes. Sadly, my State is one of only two States that has failed to accept Federal matching funds from the Pipelines and Hazardous Materials Safety Administration, but I plan to work very closely with the State to ensure that they take advantage of this opportunity, and I have discussed this with the panel.

The Nation's pipeline safety program was strengthened and reauthorized through 2010 by the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006.

The Act requires the Department of Transportation and pipeline operators to implement an integrity management program for gas distribution pipes and to ensure that all low stress hazardous liquid pipelines are subject to the same standards as other hazardous liquid pipelines. It strengthened PHMSA's authority to ensure corrective action from pipeline operation and to help restore pipeline operation during disasters. The legislation also increased inspectors by 50 percent and required the certification of safety programs by senior company executives.

Unfortunately, PHMSA has failed to fully implement the statutory mandate contained in the PIPES Act, which was due by December 31st, 2007. But had I known, Mr. Johnson, that announcing a hearing on this issue would have prompted us to get many of the things that we requested earlier, I would have held a hearing earlier. Since the hearing was announced on May 16th, they have done some quick work and issued a Notice of Proposed Rulemaking on the distribution pipeline integrity management directive, and two reports relating to corrosion control and leak detection were sent to Congress last Monday evening. I wish we got that kind of reaction out of the Department on other issues this Subcommittee deals with.

On security matters, a DOT Inspector General's assessment of the state of pipeline security that was mandated by the PIPES Act, and released last month, made it clear that much additional work was needed by PHMSA and TSA to ensure safety of public and the environment.

I look forward to hearing from today's panelists on what additional progress is being made by these agencies to fully implement the PIPES Act and to address the concerns raised in the Inspector General's report.

Before I yield to Mr. Shuster, I ask that Members be given 14 days to revise and extend their remarks and be permitted to submit any additional statements and material by Members and witnesses. Without objection, so ordered.

I yield to Mr. Shuster for his opening statement.

Mr. SHUSTER. Thank you, Madam Chairman, for holding this hearing. Thank you for yielding to me. This hearing on the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006, or better known as the PIPES Act, it is important that we hold this hearing because there has been a delay, but I think, from what I have seen and heard, that they are moving forward, and I want to thank Mr. Johnson and Ms. Gerard for your efforts.

I also want to welcome the other folks that are here, Mr. Scovel and Mr. Sammon, for being here today.

This is our first hearing in this Congress on the pipeline safety, and it comes at an interesting time for the pipeline community. PHMSA is in the process of implementing many of the statutory requirements that were set forth in the PIPES Act, and the PIPES Act set a very ambitious schedule for PHMSA. The agency was required, as we heard, to have their report on a variety of issues by December 31st of 2007. That was approximately a year after the

President signed the bill into law. While PHMSA was unable to meet most of these deadlines, I am happy to see, as I said, there is substantial progress being made in implementing the key regulatory requirements set forth by the bill.

One of the success stories for the agency and the PIPES Act has been in the area of damage prevention. PHMSA and the Common Ground Alliance just celebrated the one-year anniversary of their national 811 Call Before You Dig public awareness campaign and was recently awarded the Silver Anvil Award for the Public Relations Society of America, so congratulations for that.

In addition, PHMSA is actively involved in advancing State pipeline damage prevention programs, providing assistance the States need to set up State damage prevention programs that include the nine elements prescribed in the PIPES Act.

On these issues of pipeline security, I look forward to hearing from all the witnesses today and to hopefully hear about better coordination between the responsibilities of the TSA and PHMSA in this area. The inspector general has released a report on these efforts in May, and I look forward to his summary and to hear of PHMSA's and TSA's reaction to the report.

So thank you, Madam Chairman, for holding this hearing, and I yield back.

Ms. BROWN. Thank you.

I ask unanimous consent that the gentleman from Washington, Mr. Larsen, be allowed to participate in today's hearing and sit and ask any questions of the witnesses. Without objection, so ordered.

I would like to welcome and introduce today's panel. Our first witness is the Honorable Carl T. Johnson, Administrator of Pipelines and Hazardous Materials Safety Administration; our second witness is the Honorable Calvin L. Scovel III, Inspector General for the U.S. Department of Transportation; and our third and final witness is Mr. John Sammon, Assistant Administrator for Transportation, Sector Network Management, at the Transportation Security Administration. He used to live in my district, in Jacksonville, Florida, where he worked as a Senior Vice President at CSX Railroad from 1999 through 2000. Welcome.

Let me remind the witnesses that, under Committee rules, all statements must be limited to five minutes, but the entire statement will appear in the record. We will allow the entire panel to testify before questioning of the witnesses.

We are pleased to have you all here this afternoon, and I now recognize Mr. Johnson. Mr. Johnson.

TESTIMONY OF THE HONORABLE CARL T. JOHNSON, ADMINISTRATOR, PIPELINES AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY STACEY L. GERARD, ASSISTANT ADMINISTRATOR; THE HONORABLE CALVIN L. SCOVEL, III, INSPECTOR GENERAL, U.S. DEPARTMENT OF TRANSPORTATION; AND JOHN SAMMON, ASSISTANT ADMINISTRATOR FOR TRANSPORTATION, SECTOR NETWORK MANAGEMENT, TRANSPORTATION SECURITY ADMINISTRATION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. JOHNSON. Chairwoman Brown, Ranking Member Shuster, Members of the Committee, I am pleased to discuss how the Pipeline and Hazardous Materials Safety Administration is advancing pipeline safety.

As Administrator for only six months, I am pleased to say we are making progress both in complying with the requirement of the PIPES Act and advancing overall safety performance. PHMSA has proposed standards for integrity management for distribution pipelines, including requiring operators to install excess flow valves in new construction and when the opportunity is available. PHMSA is addressing the requirements for operators to develop a plan to reduce all risks in pipeline control, including human factors like fatigue and NTSB recommendations on the mechanics of controls and alarms.

PHMSA has been working to protect unusually sensitive areas from rural on-shore hazardous gathering lines and low stress pipelines. We issued phase one of the final rule, which covers those low stress lines that propose the highest risk to the environment.

PHMSA also issued a rule for the use of safety orders as an additional option for addressing pipeline integrity threats, putting us in a better position to ensure operators are addressing longer term conditions before they degrade.

The PIPES Act required that PHMSA evaluate leak detection technology and report on the effectiveness of leak detection systems. While we are working on research to advance the sensitivity of technology to find small leaks, we believe we have adequate oversight in place to evaluate leak detection capability and exercise authority to compel system upgrades when warranted. The final report was sent to Congress.

Similarly, the PIPES Act mandated that we review the adequacy of internal corrosion for hazardous liquid pipelines and submit a report to Congress. Our review indicates that our existing standards to protect against internal corrosion are generally sufficient to allow PHMSA to achieve safety and environmental protections. This report was sent to Congress.

PHMSA began providing monthly update summaries to the public of all enforcement actions through our enforcement transparency Website last year. PHMSA continues to make full use of its penalty authority. In 2007, PHMSA proposed civil penalties of $4,288,800, a 39 percent increase from 2006 and the second highest amount since 2002. So far, in 2008, we have proposed total civil penalties of $4,933,800.

Another of our top safety priorities is strengthening our national damage prevention efforts. Three-fourths of all human con-

sequences from pipeline failures occur in distribution systems. Sixty percent of these failures are caused by excavation damage. Our most important safety strategy at the distribution level is reducing construction-related damage, and I am happy to say that even on an annual basis you can see our efforts are paying off. This year we are making our first round of damage prevention grant awards of up to $100,000 per grant to up to 15 States.

Moving from the State to the local level, the PIPES Act requires us to award three community information grants as demonstration projects. We have developed criteria and are working with the Congress and public interest groups to finalize them. PHMSA reviewed and commented, as required, on the GAO report on the seven year assessment interval. Last November we sent a report to Congress recommending that Congress amend the law to provide us the authority to promulgate risk-based standards for pipeline reassessment.

I would like to conclude with a word about the people of PHMSA. This agency has a great story to tell, a critical mission, a smart and sound regulatory approach, and a record of success in promoting public safety and environmental protection. Like any successful organization, our greatest asset is our people. The dedicated men and women of PHMSA and our State partners are working hard, 24/7 most weeks, to oversee a network of more than 2.4 million miles of interstate and intrastate pipelines delivering essential energy products to communities, homes, and businesses.

Overseeing this network means bringing to bear the best engineering and technical talent, collecting and using data, evaluating pipeline materials, reviewing designs, inspecting operators and plans on operations, bringing enforcement actions and developing new standards and informing the public about pipeline safety. It also means a lot of time in the field and on the road inspecting the construction of new pipelines and, regrettably, responding to pipeline incidents. We take our commitment to public safety very seriously and, from the Secretary of Transportation to every inspector and investigator, safety is our number one priority.

We are making good progress and we believe it is no accident that the number of serious incidents in which human consequences is steadily trending downward.

Thank you, and I would be pleased to answer questions.

Mr. SCOVEL. Chairwoman Brown, Ranking Member Shuster, Members of the Subcommittee, we appreciate the opportunity to testify regarding pipeline security and the actions needed from DOT and DHS to enhance the security of the Nation's pipeline infrastructure.

Safeguarding our pipelines is a continuing challenge for DOT and DHS. A well-defined, well-coordinated interagency approach is absolutely critical.

As this Subcommittee is aware, the PIPES Act directed us to assess PHMSA's and TSA's actions to implement the pipeline security annex. We issued our report last month and recommended several actions that PHMSA, in collaboration with TSA, must take to enhance pipeline security.

Today we will make three points. First, PHMSA and TSA have made progress, but the current situation is far from an end-state,

and challenges remain. The annex required PHMSA and TSA to jointly develop an action plan by February 2007 to implement annex provisions and various program elements.

In December 2007, we were concerned about an overall lack of progress on several fronts. At the time, the agencies had not finalized the action plan or completed nine of the eleven annex program elements. There were no deadlines to drive decisions or reviews. We shared our concerns with PHMSA and TSA.

To their credit, both PHMSA and TSA addressed these issues earlier this year, and considerable progress has been made. The two agencies developed a new action plan and began addressing outstanding program elements and initiatives. The majority of initiatives are now planned for completion by the end of 2009. However, the action plan still does not contain all initiatives required by the annex, such as developing protocols for information sharing. Going forward, both agencies need to move with a sense of urgency to finalize and execute the annex.

Second, clearer lines of authority are needed to address oversight and enforcement for liquified natural gas, or LNG, facilities. The annex does not explicitly state which agency has primary oversight and enforcement authority for LNG operators, an important part of the pipeline infrastructure. As a result, there is a lack of clearly defined roles at the working level. Both PHMSA and TSA review pipeline operators' compliance with their respective security guidance. We note that TSA's guidance, however, is voluntary and will remain unenforceable unless a regulation is issued to require compliance. Conversely, PHMSA is able to enforce its LNG security regulations, which existed prior to the creation of TSA in 2001. This may cause pipeline operators to receive conflicting or duplicative guidance. It also creates confusion as to which agency should be the lead Federal security regulator.

We think PHMSA and TSA should amend the annex to delineate the agencies' roles and responsibilities for LNG operators. We point to an interagency agreement in 2004 between PHMSA, the Coast Guard, and the Federal Energy Regulatory Commission for safety and security reviews of LNG facilities located near ports. This helped focus actions and resources and limit duplicative efforts. A similar approach should be taken with the pipeline security annex to clearly define roles and responsibilities for inland LNG facilities.

Third, PHMSA and TSA need to maximize resources for assessing security plans and guidance. Last year, Congress passed the 9/11 Commission Act, which requires DOT and DHS to develop a plan to review the 100 most critical operators' security plans and critical facilities by August 2008. These reviews are underway. To determine whether additional security regulations are needed, PHMSA and TSA will need to evaluate and test the adequacy of existing security standards as agreed to under the annex.

We see two areas where PHMSA and TSA can maximize their resources. First, PHMSA should participate in these inspections on a regular basis, especially given its level of expertise in security-related matters. Second, PHMSA and TSA should develop testing protocols and perform vulnerability tests to ascertain whether unauthorized individuals can penetrate operators' critical infrastructure, including through cyber attacks.

DOT and DHS must move beyond coordination and leverage their resources and skill sets to secure the Nation's pipelines. This is a fundamental factor to enhance pipeline security and take a proactive approach.

That concludes my statement, Madam Chairwoman. I would be happy to answer any questions that you or other Members of the Subcommittee might have.

Mr. SAMMON. Good afternoon, Chairwoman Brown, Ranking Member Shuster, and Members of the Subcommittee. I am pleased to have this opportunity to testify on the collaboration between TSA and the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation. I would like to highlight how our respective agencies have different but complimentary roles and responsibilities to protect the security and safety of our Nation's pipelines.

To understand the context in which TSA exercises its authority in the security of pipeline systems, it is important to review the transition of responsibilities from PHMSA to TSA and DHS.

In November 2001, the Aviation and Transportation Security Act established TSA within DOT. That Act gave TSA the lead responsibility for security in all modes of transportation, including pipelines. DOT retained responsibility and authority for safety.

In November 2002, when the Homeland Security Act created DHS, TSA was transferred from DOT to DHS.

In 2004, a Memorandum of Understanding between DHS and DOT recognized DHS as having primary responsibility for security in all modes of transportation. The 2006 TSA-PHMSA Annex to that MOU further clarifies the respective agencies' roles.

The evolution of TSA's authority in transportation is most apparent in commercial aviation. The rules and responsibilities among airlines, airports, and air cargo industry have become well established. In the simplest terms, FAA has responsibility for enforcing the safety and reliability of aircraft, and TSA has responsibility for the security of passengers and cargo on the plane.

Security rulemaking authorities in other modes of transportation are evolving. General aviation and freight rail will soon have clarifying regulations in place. Rules for training, security assessments, and security plans will cover highway, freight rail, and transit. Down the road, we are contemplating rules for pipeline and highway based upon best security practices and the direction of Section 1557(d) of the 9/11 Act. Where DOT legacy rules govern security, those rules provide an important baseline and TSA supports their efforts. As TSA continues its rulemaking focus beyond commercial aviation, TSA will build upon and supersede DOT rules. That is the nature of our relationship.

I would like to assure the Subcommittee that DOT, PHMSA, and TSA are aligned and work closely together. TSA's Pipeline Security Division and the PHMSA staff communicate daily. PHMSA accompanies TSA on pipeline corporate security reviews. PHMSA attends TSA's pipeline security conferences. PHMSA is a member of TSA's Transportation Security Government Coordinating Council, along with other important pipeline working groups. PHMSA participates in TSA's monthly pipeline security teleconference calls. And the

TSA-PHMSA MOU Annex working group meets at least quarterly to review and update action items in the plan.

Now, the core focus of TSA's efforts is on risk reduction and better security. The centerpiece of TSA's pipeline security program is the pipeline security review. TSA assesses the corporate security

In 2003, President Bush issued HSPD-7, giving DHS the lead role in the protection of certain critical infrastructure, including pipeline systems. TSA assesses the corporate security plans and programs of the top pipeline operators. We then establish a baseline to evaluate security standards and identify coverage gaps. TSA ranks pipeline companies on a risk basis as a means of focusing our security improvement efforts with those companies. TSA's pipeline smart practices reflex lessons learned from years of corporate security reviews. TSA identifies and shares its best practices with pipeline industry representatives. Coupled with pipeline employee security awareness training, TSA has helped to substantially increase the effectiveness of industry security programs by making training available to many pipeline employees.

In conclusion, TSA has worked hard with PHMSA and our industry stakeholders to clarify our security and safety roles. Security stakeholders have told us that they understand our respective roles and they are not confused. Our TSA team looks forward to working in concert with PHMSA to further align our security network and strengthen the network as the years go on.

I would be pleased to answer your questions.

Ms. BROWN. Thank you.

We are going to start with Mrs. Napolitano to make your opening remarks and then ask your questions.

Mrs. NAPOLITANO. Thank you, Madam Chair. I will be brief, if I may.

Thank you for the hearing. I have great interest in pipeline security, given that my district is home to major pipelines in transport of military and commercial fuels such that the Norwalk Tank Farm, which is owned and operated by the Air Force and leased out to a couple of private companies, has had leaks of JP-4 and JP-5 for the last 20 years. And when the city wanted to ask questions, they were told no way, no how, no shape, no form because this is high security.

I think there has to be a lot more communication and ability to be able to work with the communities to inform and educate them, and be able to take input from them. That is one of the things that really is of high concern to me.

This cleanup has been going on for 15 years; there are another 5 years to go on it. These are lines that have been there for many, many, many generations that have leaks. My concern is, because the fuel comes in from the ports and is piped, what happens if there are other leaks that have been buried for 20, 30, 40, 50 years and are going to affect the aquifers, the drinking water bodies of some of those areas? That is not even being covered and that is something that is of great concern not only to me, but many others who have had the unfortunate—how shall I say?—background of having air bases and naval bases where scraping fuel and burying it in pits was the modus operandi of cleaning tanks out. Now, this was many years ago, true, but those things are now affecting our

water. And how do we begin to deal with it is something I would like to cover here.

Now, my question to Administrator Johnson, what are you doing to ensure that the operators are not only investing, but implementing the most effective leak detection technology? And is this applicable to old pipelines that have been underground for decades?

Mr. JOHNSON. Mrs. Napolitano, it is a part the integrity management program that every company does give a report and is monitored very closely on those activities.

Mrs. NAPOLITANO. Well, I have been on this Subcommittee a year and a half, and this is the first time I have ever heard that there is a segment of a Committee that works on these issues. I have been on that issue for over 20 years, and this is the first time I have ever learned that there was a pipeline and hazardous materials safety that had oversight over these pipelines.

Ms. GERARD. Are you speaking of only military facilities?

Mrs. NAPOLITANO. At this point, only military, because that is where I have had my experience.

Ms. GERARD. We do, under the Oil Pollution Act, review and approve the spill response plans and the issue of valves and leak detection is a part of the review. It is a five-year cycle. Every five years we look, unless the company has had significant changes in their planning. But that is one place where the Department of Transportation has jurisdiction over military pipelines.

Mrs. NAPOLITANO. Okay, but then again I am sure a lot of the other pipelines are built in public domain, run by private companies, and I would have the same concerns with them.

Ms. GERARD. In the report that we sent to Congress on Monday on leak detection, we speak to the technology issues, where the challenges are. We have six research projects underway in which we are investigating ways to make the leak detection more sensitive. But we do discuss how we review the leak detection programs in high consequence areas. As a matter of fact, for liquid pipeline companies, 44 percent of our inspections have resulted in requesting some form of an upgrade in the leak detection capability. That report was just issued on Monday.

Mrs. NAPOLITANO. I would love to have a copy of that report. I certainly hope that we can move a little more expeditiously in trying to figure out how to protect the general public, because a lot of these companies will close shop and be gone, and then it falls on the taxpayer to do the cleanup. And we have so many of our communities that will be affected, and I am talking both public and government.

Ms. GERARD. I would like to add that we have restored the national pipeline mapping system to public view so that local officials and the public does have access to information about who operates the pipelines in their communities, and we have a very active website that could give you information as a citizen on the record of that operator.

Mrs. NAPOLITANO. But that really doesn't answer the question about testing old pipelines.

Ms. GERARD. Well, the pipelines are required to be tested under the integrity management program. A liquid pipeline is required to be assessed using two types of technology. So any pipeline that is

an area where people could be affected by a spill, any place where there is a sole source of drinking water, and any place that we have defined as unusually sensitive is required to be tested and repeated to be tested.

Mrs. NAPOLITANO. And are those broken down by districts or by States or by counties, because how would we know that there is an issue in our area or in Mr. Sires' area?

Ms. GERARD. The operators are required to report annually. It is a public record. They are required to report on their progress with the testing and the repair of any defect that meets the criteria needing repair. So those are public reports. We would be happy to follow up with you to help the people in your community learn how to find that information on our website. It is public.

Mrs. NAPOLITANO. Thank you, Madam Chair.

Ms. BROWN. Mr. Sires, your opening remarks or questions.

Mr. SIRES. Thank you, Madam Chairperson.

I come from a district that I think there are more pipes underneath me than anywhere else. It is the northern part of New Jersey, Jersey City. We have a repository of oil in the Bayonne area that handles about 15 millions gallons of oil per day.

I actually learned about the inconsistencies between the agencies as a result of a railroad accident that happened in Woodbridge, New Jersey with some of the hazardous materials. What I am concerned with is when do you inform the locals about the leak or the accident, the material that is spewing out of this leak? When do you do that? Because one of the complaints that I have from one of the mayors in Woodbridge on this particular derailment accident was that he was not informed what was in the tanks. I assume the same thing applies to the pipes. If there is an accident with the pipes, when do you inform the local community of what is happening? Do you inform it at all or do you fix it and then you tell them what happened? How does that work?

Ms. GERARD. We post reports of incidents on our website. We——

Mr. SIRES. Ma'am, excuse me. That is not what I am asking. I am asking, if the accident happens, when do you tell the community, listen, there is a problem here? Because that is exactly what happened with the railroad derailment. He had all his EMS trucks, he had everybody there, and there was nobody to tell him whether his police officers or his management team was in danger of being contaminated with anything. So my question is—I know about the report, I heard you say it to the Congresswoman—if something happens in a pipe, when do you inform the community and say, look, this is a gas leak or whatever leak it is? Or you don't inform them until you fix it?

Ms. GERARD. We respond to accidents in which there has been some form of human consequence or major environmental consequence. If we are at the scene of an accident, we would be communicating with that community immediately, along with the operator. We also have strengthened our requirements for the operators to have public education programs. It is a fairly recent requirement, the last few years, but they have to have active programs to work with the locality and to inform them about their integrity management program. So there are many opportunities.

In addition, we work with State fire marshals on programs to have them involved with the community so that somebody at the State or local level could help identify for the community what is going on with the pipeline.

Mr. SIRES. This is when the accident happens?

Ms. GERARD. When the accident happens, if we are there——

Mr. SIRES. Who do you notify?

Ms. GERARD. If we are there, we would work with the locals.

Mr. SIRES. Well, if you are not there, is there anybody in charge to notify the local community——

Ms. GERARD. The operator would be there. The operator.

Mr. SIRES.—that this particular leak, or whatever it is, is not hazardous to that community? What I am trying to get at is I know that you fix it and you respond, but sometimes somebody has to tell. In my district, everybody is on top of each other. This is a very congested district. So if something happens, it could hurt a lot of people and sometimes those communities are not informed of what the particular leak is.

Ms. GERARD. It shouldn't happen that way, and I believe that we are making progress with operators providing that information immediately at the time of an accident, working with the local response community. And if we are present, we would certainly see that that happens. So it may not be perfect, but I believe that the public education requirements, the emphasis we are putting on working with communities is making a big difference on operators' programs, and we would be happy to follow up with you on that.

Mr. SIRES. This may not be part of this hearing, but with the derailment of railroad cars in my district, Woodbridge just had a recent derailment and the mayor and everybody showed up with all the equipment. Nobody told them what was going on. And he is very upset and he wants to have an investigation; he has contacted my office. I just think that somebody should contact, if anything happens, those communities.

Ms. GERARD. On the hazardous materials railroad side, we have newly awarded a grant to the International Association of Fire Chiefs to build a fusion center to be able to share information more quickly about what is going on in incidents in real time. It is an area that PHMSA is involved with. We are making progress. We are also working with DHS, who has fusion centers. I think that there are more resources being brought to bear on sharing information about what is going on in events and what you have to learn from them.

Mr. SIRES. So, Ms. Gerard, up to now you haven't had anything like that?

Ms. GERARD. I can't speak to, in a railroad accident, what the communication from the railroad operator is required to be.

Mr. SIRES. Thank you very much, Madam Chairwoman.

Ms. BROWN. We will follow up with that question. I think that is an excellent question because, from talking to the staff, now it is really no one's responsibility to notify that local mayor or that local community; they investigate, but they don't necessarily notify?

Ms. GERARD. I am not familiar with the hazmat railroad public information requirements, but we will get that information for you and report back.

Ms. BROWN. No, I am not talking about the railroads. I am talking about if something happens to a pipeline. If there is an accident, how is the local community notified?

Ms. GERARD. The public education requirements for pipeline operators would speak to a range of requirements during an event in general about their programs. I believe we have those requirements covered.

Ms. BROWN. We will come back to that.

Mr. Larsen?

Mr. LARSEN. Madam Chair, as you know, I am a guest of this Subcommittee today and I don't want to interfere with your process. If it is appropriate for the Ranking Member to speak before me, then I will allow that. But, if not, I will go ahead and take my turn.

I was saying I am a guest of this Subcommittee today, and I don't want to get out of anyone's turn. If it is more appropriate that the Ranking Member go before me, then I will take my turn after him.

Ms. BROWN. He has graciously agreed to yield so we can hear from you all, then we will go back and forth.

Mr. SHUSTER. It is our hospitality program.

Ms. BROWN. Yes. We have worked it out.

Mr. LARSEN. I have always known Bill to be very hospitable, and I appreciate it very much. Thank you, Madam Chair.

As we gear up for 2010's rewrite of this bill, it would be the third one that I have been through, presuming I am here, and I guess the one theme that has gone through this is where the regulatory agency hasn't stepped in to act, then Congress has stepped in, and that has manifested itself in the language of the 2002 bill and the 2006 bill, which is why I think when we saw the 2006 bill, a lot of actions had been taken by the regulatory agencies at the time, RSPA and some others, in order to implement the 2002 bill. So I think as we are looking at the implementation of PIPES, to the extent that things aren't getting done, it is going to be a much more involved 2010 piece of legislation unless things are getting done. That just seems one of the themes.

Madam Chair, just before I continue, I do have an opening statement, but I will just enter it for the record and just continue with questions.

The first question I have is for Mr. Johnson, having to do with PHMSA's draft criteria for the pipeline safety information grants to communities. We created these grants in 2002 and reauthorized them in 2006, and we are only now seeing the draft criteria for these grants. There are a few questions that have come from the community about those, and you may be aware of these questions, so I would like to get some feedback.

One in particular has to do with requiring a community co-sponsor for these grants to work with a pipeline operator. There is a concern about the independence of the plan that would be created from the grants if the communities are required to work actually

with the pipeline operator. Can you talk about why you think that might be a good idea?

Mr. JOHNSON. Representative Larsen, I think that the idea that we have is to have communications among all the parties involved so that there is a complete understanding, and that is what we are hoping to achieve through that.

Mr. LARSEN. I understand that. But do you think that that needs to be a requirement, then?

Mr. JOHNSON. No, it does not need to be a requirement. It is just something that I think is almost intuitive, it makes sense to do.

Mr. LARSEN. Thanks. I hear you saying it doesn't need to be a requirement, and maybe that can get reflected back in the criteria.

I think there was a concern, too, about having the community conduct a risk analysis for their plan and concerns that that might be expensive and suck up all the money they have for the grant to complete a risk analysis, in fact, when a risk analysis may not be necessary for the particular community plan that they have. Can you discuss why a risk analysis might be necessary when a community may not need to do one?

Mr. JOHNSON. We will yield on that.

Mr. LARSEN. That is fine. Okay, great. I would appreciate a word back.

Finally, requiring a project scope to include a high consequence area, or an HCA. Without knowing where the HCAs are located, I think some concerns out of the community were how could you require them to include in a project scope the high consequence areas if they weren't wholly familiar with where all the HCAs were located.

Ms. GERARD. As the program has evolved, it has turned out that between 60 and 80 percent of the pipeline miles are in areas that could be affected by a pipeline spill, so we thought that since the vast majority of the pipeline falls into that category, that it would be a priority to award grants to a community that was in the 60 to 80 percent. We didn't mean it to be limiting, we just thought that with only a few projects it would seem best to give it to communities that have the greatest likelihood of being affected.

Mr. LARSEN. Well, I think there might be some work still to be done on the criteria, to work with the communities to flush these out a little bit, maybe a little more flexibility on how this is dealt with.

Mr. Sammon, as you are all dealing with this dance between TSA and PHMSA, who goes first and who goes second on which issues, I think I understand your rubric, if you will, that security is security and safety is safety, and we have examples in the FAA and TSA to look to. But I guess I have one concern over the last several years, as we have rewritten this bill a couple of times, reauthorized this bill a couple of times, has had to do with the mapping system and the reluctance and resistance to some on the security side to releasing the mapping system and then the reluctance from the folks on the security side to continue to allow the map to be available. I hope that as you are working through this in the future, that you are not coming to us telling us or we are hearing from other people that the TSA folks have decided to subsume the

national pipeline mapping system to the netherworld so no one can see it again.

Mr. SAMMON. That is a very good question. We are working——

Mr. LARSEN. It was more of a statement.

Mr. SAMMON. It is a very good statement. We are working with PHMSA. We are concerned about how much critical infrastructure is made available on the web, and that is obviously someone sitting overseas, surfing the web, looking at this stuff in terms of its accessibility, how critical it is; and, at the same time, the issue of safety and people being able to get to these facilities. That is why, in the railroad area, in terms of placarding railroad cars with hazardous materials, toxic inhalation chemicals and so on, we are not in favor of taking the placards off, because we think the first responders need to know and need to see what is in those railroad cars if there is an incident. So it is a fine line and we are trying to balance security versus safety, but we are always concerned about how much critical infrastructure you make available on the web; it is a balance we have to work out.

Mr. LARSEN. I understand that, and we are here to help you find that balance.

Mr. SAMMON. Thank you very much.

Mr. LARSEN. You are very welcome.

Thank you, Madam Chair.

Ms. BROWN. Thank you.

Mr. Shuster.

Mr. SHUSTER. Thank you, Madam Chair.

Thank you, Mr. Larsen, for being here. I know you were very involved over the past couple years in the original Act, so I appreciate you being here and you championing pipeline safety.

Mr. Johnson, in your testimony you mention that getting ready for the distribution integrity management program is a lot more than a rule. Can you elaborate on PHMSA's current oversight of the State pipeline safety programs that will help in the implementation of the DIM?

Mr. JOHNSON. Thank you, Congressman Shuster. The distribution integrity management program is probably the biggest change in history for pipeline regulations we have undertaken. It did require a system and we believe we have built one. It required standards that were consensus standards that had to be vetted through a public organization; it required guidance and training, IT for databases and resources; and, in addition to that, it required working with 50 States to implement a performance standards that are rather difficult to accomplish. It takes a lot of time and a lot of coordination and a lot of work, and I believe we have done that. We are proud of the work that we have done and proud of the product.

We award State grants based on the results of these evaluations, the evaluations that are made by the States, and that is part of the whole system.

Mr. SHUSTER. When you are implementing the DIM, how do you address the differences between large and small, when you have the 500 customers versus the hundreds of thousands of customers?

Mr. JOHNSON. There are three actual segments: there is the large group, then there are groups that are called, I guess, the small and handy—integrity management plans groups which are less than

12,000—and then there are small units that are just dealt with like an apartment building or small trailer park, or something of that nature. They are segregated in that way and each have slightly different standards.

Mr. SHUSTER. I also understand that there has been a surge or quite an increase in pipeline construction. What are you doing to oversee that and making certain that the new pipelines being constructed are meeting the standard?

Mr. JOHNSON. The pipeline building boom that we are seeing right now is probably the largest in the last 10 years or more, and it is literally changing what we are doing, bringing in new designs, new materials, construction methods, and all the challenges that go with that. The PHMSA staff is spending probably about 12 percent of its time overseeing this activity. It is a big challenge, but it is something that we are committed to.

Mr. SHUSTER. Thank you.

Mr. Scovel, your view on TSA doing the security and PHMSA safety, how is that working? Are there things falling through the cracks? Have they worked out communications and protocols enough to make sure that everybody is working together and we are not seeing things fall through the cracks or got left behind?

Mr. SCOVEL. Thank you, Mr. Shuster. Your question, I think, goes to the working relationship between PHMSA and TSA with regard to security and was the subject of our report, that is, the implementation of the security annex through the action plan. Our report was released last month.

We have found that the working relationship between the two agencies has been pretty good, of late especially, and we commend PHMSA specifically for its effort and foresight in creating a position dedicated specifically to pipeline security, as opposed to safety, and locating it in the Office of the Administrator, which gives it proper visibility. It is one-stop shopping, essentially, for PHMSA's security focus and gives it a point of contact specifically for TSA.

TSA, on the other hand, has a much smaller section to deal with pipeline security. There is a different focus, a different culture, clearly, between the two. PHMSA has a much longer history and a culture of willing to engage in regulation. TSA, on the other hand, as we have heard this afternoon already, has focused its attention on a voluntary guidance and compliance scheme, as opposed to enforceable regulations.

Mr. SHUSTER. Who did what? What was the last thing I missed?

Mr. SCOVEL. TSA has decided to employ a guidance and voluntary compliance scheme, as opposed to PHMSA, which has a history of being willing to regulate inappropriate cases. There is that culture mix that needs to be continually negotiated between the two agencies.

Mr. SHUSTER. In your testimony, is that the authority that TSA needs to pursue to be able to enforce and regulate more aggressively on the security side?

Mr. SCOVEL. Not necessarily. I know that Congress, with the 9/11 Commission Act of 2007, directed both agencies to assess the security plans of the 100 most critical operators and their critical facilities. That effort is underway. Regulation would be the most extreme action, of course, that these agencies can take, and that may

be necessary, but until the assessment is complete it would be premature for me, certainly, to say that is the required route. It may be simply that modification of existing compliance plans and activities along those lines would suffice.

Mr. SHUSTER. Mr. Sammon, do you believe you need more authority to be able to do your job?

Mr. SAMMON. No, I think through ATSA and the kind of history I outlined, we have the authority. What we are doing right now is following the explicit intent of Congress in the 9/11 Act. Congress, through 9/11 Section 1408, Section 1512, 1517, 1531, and so on, explicitly directed that regulations be put forward for rail transit, highway, and so on. Under 1557(d), which covers pipelines, they specifically ask that we complete the review and then also determine if—and the word "if" is in there clearly—necessary to promulgate regulations in a pipeline. And that is what we are doing, is to comply with the desire and wishes of Congress.

Mr. SHUSTER. Thank you very much.

I yield back, although I have gone over my time.

Ms. BROWN. Thank you.

Mr. Johnson, I realize that PHMSA has touched on all of the statutory mandates in the PIPES Act in some way over the last 18 months, but I am concerned about the slow progress in implementing some of the mandates. I start with the low stress hazardous liquid pipeline rulemaking. Why did PHMSA decide to pursue a two part phase approach to meet the mandate? If it is further information you need to complete the rulemaking, what specific information are you looking for? When will a rule be issued on phase two? Will we see a final rule on the issue in 2008? I am really concerned about six months left in this Administration, and then we get a new Administration and then there is a time lapse. Can you address that?

Mr. JOHNSON. Madam Chairman, the information that we are gathering—actually, the Congress permitted the rule to be divided in two phases, and we felt it was necessary to get the phase one out to protect the unusually sensitive areas, water and things of that nature. But we are gathering data that we do need to have. The data really is coming in four ways: it is coming in comments on dockets, it is coming from field visits that we are making, State surveys through the National Association of State Pipeline Safety Representatives—NAPSR it is called—and then the annual reports that companies file. We are constantly getting that material in and we should have it in relatively shortly. We anticipate having a rule ready by the fall, a proposal.

Ms. BROWN. I have a follow-up question. The Secretary of Transportation and Energy is required in the PIPES Act to conduct periodical studies to find out whether or not any of the shortage of price distributions may be caused by pipeline failure. And you know we are in a crisis mode as far as the price of oil is concerned. Do you know whether or not it has anything to do with failure of the pipelines?

Ms. GERARD. We have been working on that study and are nearly finishing it, and from the work we have done it seems that the regulatory structure we have and the practices of the operators in fact return the pipelines to service very quickly or there is access to

supply from trucks. So we have not actually seen, even with the hurricanes of 2005 and later and the events in Alaska, the market actually didn't experience a shortage for more than a few days. So we do believe that the structure we have in place is good enough to produce the reliability that we need.

We would be happy to come up and brief you on our findings in more detail.

Ms. BROWN. As I said earlier, I will do a visit, a site visit, in the very near future.

Mr. Larsen, I understand you have another question.

Mr. LARSEN. Thank you, Madam Chair.

Administrator Johnson, with regards to the reassessment intervals, a few questions. Can you first describe the current waiver process that you use for the reassessment interval?

Ms. GERARD. We went through an extensive public comment period and review with our advisory committee, had a public meeting this winter on that subject, and there is a very extensive set of standards in place that we would use to grant a waiver. We think that we have the authority, under our general waiver authority that pre-existed the PIPES Act, to be able to make a determination if there was a solid engineering basis for accepting a different interval in the seven years. So there is quite an extensive record on that.

Mr. LARSEN. Have you issued any waivers under that?

Ms. GERARD. No, not yet.

Mr. LARSEN. The operators have pointed out for segments baseline inspected in 2003 and 2005 the reassessments have to be done in 2010 and 2012, even though some of the baselines are still being conducted. This is one of the issues that we discussed in 2006 in putting the PIPES Act together, this potential overlap of baseline inspections and reassessments for the same operator; perhaps in a different area, but for the same operator. That is certainly going to put some pressure on PHMSA and perhaps your State partners in terms of inspection and equipment. Are you concerned about that overlap period? Are you currently preparing for that overlap period by having an increased number of inspectors and equipment ready?

Ms. GERARD. The burden for conducting the inspections is really on the operators, and we have the greater concern about getting the assessment in all communities. It would be our preference that all communities would be inspected first, before we were returning with reassessment. As you know, the PIPES Act did provide for significant increase in resources, both for PHMSA and States, and I believe that we are in a much better positions, and our States, moving forward to be able to have an increase in inspectors to oversee the operators' plans.

Mr. LARSEN. Are you then receiving the dollars in the budget to meet that increased authorization?

Ms. GERARD. We are moving along smartly to increase the number of inspectors and the Senate has—I guess it was the Senate?—we have seen one of the marks for 2009 and we are hopeful that we are going to get the resources we have asked for.

Mr. LARSEN. Madam Chair, not to presume the reauthorization in a couple years, but I am just making a note about things begin-

ning to take shape in looking at testimony today and Energy and Commerce from a few months ago we were looking at public safety information grant, probably looking at the reassessment again, low stress pipelines, this issue of pipeline security and safety. Those four issues probably at least, not to mention the other things folks are going to bring up, certainly probably bear some further attention from us as we move forward into next year and gearing up for a 2010 reauthorization.

Ms. GERARD. I should have pointed out that the Secretary did send a letter, at the request of the House Energy Committee, on the subject of the approach to dealing with the reassessment interval through a regulatory approach, and we would be happy to make that letter available to you dealing with our strategy for that.

Mr. LARSEN. Could you provide it to the Subcommittee?

Ms. GERARD. Absolutely.

Mr. LARSEN. Thank you.

Thank you, Madam Chair. I yield back the remainder of my time.

Ms. BROWN. Thank you.

Mr. Shuster?

Mr. SHUSTER. Yes, just one final question to Mr. Johnson. The rulemaking and reports that were due December of 2007, when do you feel as though that will be completed? I know you came on board just six months ago, but do you have a time line of when we can expect to see what is required completed, and to us?

Mr. JOHNSON. The materials that we have—most of the mandates are addressed. They are either at OMB, they are in NPRMs or they are on their way. It is my goal to push as hard as we can to get those things accomplished in the time that we have left, which is rapidly diminishing, and I can assure you that I and the PHMSA staff are doing all we can to get this done, and that is our commitment, to get it done. A lot of things we don't control affect that, and I hope that our goals are met.

Mr. SHUSTER. Is the hangup at OMB? Because I know there is a public comment period. What is that, 60 days or 90 days?

Mr. JOHNSON. It varies. They are major rules, so they do need to have the time that people can take a look at it and make comment to, and that process is the unknown.

Mr. SHUSTER. Right. And is it OMB that is a sticking point?

Mr. JOHNSON. I don't know that I would call it a sticking point. They do what they do with great deliberation.

Mr. SHUSTER. Sometimes too much deliberation. I don't know if it is the accountants or the lawyers that hold it up there. I would put my money it is the lawyers that hold it up.

Well, thank you very much. Appreciate your being here today.

Mr. JOHNSON. Thank you.

Ms. BROWN. I have a couple of security questions. There were a number of statutory mandates contained in the 9/11 bill related to hazardous materials and pipeline security. Most of those were to be implemented by May 2008. What is the status of those mandates? And that is for all three.

Mr. SAMMON. Let me take a first shot at it, Congresswoman. First, 1557(a) was to establish a program for reviewing pipeline operator adoption of the 2002 guideline recommendations. That has been completed.

Section 1557(b), develop and implement a plan for reviewing the pipeline security plans and inspection of critical facilities of the 100 most critical pipeline operators. The plans were to be in place by August 3rd and, as the Inspector General has said, that is underway. The plans are in place and we are hiring contractors to make sure we can cover all the facilities with inspectors who are qualified and complete that.

Section 1557(d), develop and transmit to operators security recommendations for national gas and hazardous liquid pipeline facilities. We are working on that. It is basically looking at today's guidelines and finalizing those for 2008 for an OMB review.

Section 1557(d) further, to promulgate any necessary regulations—if the Secretary determines if regulations are necessary and to promulgate those, but also to incorporate the 2002 security guidelines within those regulations and any other information that is found from the 1557 part (b) inspection of the 100 most critical facilities.

1558 is to develop a pipeline security incident recovery protocols plan. We are working closely with PHMSA. PHMSA's experience, as the Inspector General mentioned, particularly in terms of safety and accident and recovery, is invaluable, and we want to work with them and make sure we draw upon their expertise.

1558(d), submit a report containing the pipeline security and recovery plan and estimate of the private and public sector cost to implement any recommendations. Again, we are working closely with PHMSA on that plan. We want to make sure that we draw upon their expertise and use their recovery capabilities and experience to do that properly.

Mr. SCOVEL. Madam Chairwoman, if I may. I can be brief. You will know from our report released last month and our testimony that we focused on pipeline security, in accordance with your mandate under the PIPES Act. In doing so, we looked at the 9/11 Commission Act from 2007 and the requirement for the inspection and assessment of the security plans for the 100 most critical operators and their facilities.

Mr. Sammon has advised the Committee that they are on track, apparently, for the August 2008 deadline. Our testimony, however, made the point that a simple paper review of security plans will not be enough. We have strongly recommended that vulnerability testing take place. From our experience in the aviation security environment, actual physical tests of facilities and, in this case, cyber attack testing would be most beneficial. Until that happens, what we have are some pretty good paperweights in terms of what a security plan and a written review might look like. To be truly effective for the Country and for the agencies involved, some vulnerability testing and detailed reviews of those results would be required.

Ms. BROWN. Excuse me. That is right, that is what is in your report, and you saying that they needed to do some covert testing. I want to know whether or not any of that is taking place or where are we as far as this mandate is concerned.

Mr. SAMMON. Well, I will say what our plan is is to follow the language of the 9/11 Act, which requires not only reviewing security plans, but inspecting the critical facilities. So what we are

doing is following specifically the language of the 9/11 Act, and that is our intent. In terms of covert testing, we are not doing any covert testing at the present time, nor in terms of the inspections, I don't believe we are contemplating covert testing at this point in time.

Ms. BROWN. So the coordination is just paper review?

Mr. SAMMON. No, it is an onsite inspection of critical facilities, as required by the Act.

Ms. BROWN. I guess the follow-up question would be what is needed for additional pipeline security regulation. What should we be doing, then, in Congress?

Mr. SAMMON. Well, I think first what we ought to do—I think Congress has, in terms of overall security through the 9/11 Act, addressed broadly all the modes of transportation and very specifically under Section 1557 been very explicit in terms of what Congress would like to see done, and I think the first thing we ought to do is comply and fulfill the requirements of Section 1557 of the 9/11 Act.

Ms. BROWN. Well, you know, this is our first hearing, but some of the issues that were addressed, we are just getting that information in the last week, and I think one of the Members' questions was very important, as to when an accident occurs, who is responsible for contacting the person that is responsible, the local mayor of the community. I don't know that we got an answer.

Ms. GERARD. As it relates to a pipeline accident, we have very clear regulations on the requirement for communicating with the community both through the emergency response officials and I think during an accident. Where we left the question open was in the case of a hazmat railroad event. We are going to have to check on that and get back to you.

Ms. BROWN. For example, the accident that took place in Tampa. Part of that could have been prevented if we had additional education, as far as the community is concerned. Where are we as far as that education component of the program?

Ms. GERARD. Actually, I am so glad that you mentioned that. We are preparing with Department of Homeland Security a full program later this summer. We hope you have the opportunity to attend. Representatives from industry will be participating and we have a full program planned for emergency response officials to upgrade their preparedness for exactly that kind of event. So we couldn't agree with you more.

Ms. BROWN. Another follow-up question. What we need to further focus our efforts to enhance the pipeline and security act. What would be the recommendation, starting with Mr. Johnson?

Mr. JOHNSON. Well, we certainly have a very good working relationship with TSA at this point, and we are participating with them on inspections and we have quarterly reviews. I think that should TSA decide that they want to do some of these vulnerability tests, we would certainly be pleased to provide our advice.

Mr. SCOVEL. Madam Chairman, if I may return to your point about vulnerability testing. If the attention of Congress is needed to ensure that vulnerability testing will take place, my office strongly recommends that Congress take that action.

Mr. SAMMON. I didn't mean to imply that we are avoiding the cyber testing. We have contracted with Applied Physics Lab of Johns Hopkins to do that analysis of cyber security vulnerability of pipeline systems overall. So in terms of going out and testing each of the 100 facilities, no, but what we are doing is contracting one of the premier labs to determine what is the status and the vulnerability of the pipeline control systems to cyber security. That contract is just underway right now.

Ms. BROWN. I want to thank the witnesses for their testimony and the Members for their questions. Again, if the Members of the Subcommittee have additional questions for the witnesses, we will ask that you respond to them in writing. I know that we have some additional questions that we are going to give you. The hearing record will be held open for 14 days for Members wishing to make additional statements or to ask further questions.

Unless there is further business, the Subcommittee is adjourned.

[Whereupon, at 3:45 p.m., the Subcommittee was adjourned.]

Statement of the Honorable Corrine Brown, Chairwoman
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Hearing on Implementation of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006
June 25, 2008

The Subcommittee on Railroads, Pipelines, and Hazardous Materials will come to order.

The Subcommittee is meeting today to hear testimony on Implementation of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006.

This will be the first hearing that the Subcommittee has held on pipeline safety since taking over jurisdiction of this issue at the beginning of this Congress.

One of the top priorities for the Committee when the Democrats took over was to expand the oversight role that was

sorely lacking, and allowing the Administration to go unchecked by Congress.

Nowhere is this oversight more necessary than the pipeline infrastructure in this country, which transports billions of gallons of fuel, natural gas, and hazardous materials. This is a critical issue as we struggle to make our nation's infrastructure safe from accidents and secure from attack. It is also clear that pipeline accidents don't just impact the community where they happen. They can have an impact on the entire U.S. economy.

Everyday in the US, millions of gallons of fuel and other hazardous liquids travel through 2.2 million miles of pipeline that deliver these important commodities to local towns and businesses. In my home state of Florida, we have nearly 32,000 miles of pipeline, and as recently as November, we had a

pipeline accident that badly injured a teenager and forced the evacuation of 3,000 homes. Sadly, my state is one of only two states that has failed to accept federally matched funds from the Pipeline and Hazardous Materials Safety Administration (PHMSA), but I plan on working very closely with the state to ensure that they take advantage of this opportunity.

The nation's pipeline safety program was strengthened and reauthorized through 2010 by the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act).

The PIPES Act required the Department of Transportation and pipeline operators to implement an integrity management program for gas distribution pipelines, and to ensure that all low- stress hazardous liquid pipelines are subject to the same standards as other hazardous liquid pipelines. It strengthened

PHMSA's authority to ensure corrective action from pipeline operators and to help restore pipeline operations during disasters. The legislation also increased inspectors by 50 percent and required the certification of safety programs by senior company executives.

Unfortunately, PHMSA has failed to fully implement the statutory mandates contained in the PIPES Act, many of which were due by December 31, 2007. But had I known, Mr. Johnson, that announcing a hearing on this issue would have prompted PHMSA to get some of these things out the door, I would have held this hearing much earlier. Since the hearing was announced on May 16, PHMSA has done some quick work to issue a Notice of Proposed Rulemaking on the distribution pipeline integrity management directive, and two reports relating to corrosion control and leak detection were sent to Congress

late Monday evening. I wish we got that kind of reaction out of the Department on other issues this Subcommittee deals with.

On security matters, a DOT Inspector General's assessment of the state of pipeline security that was mandated by the PIPES Act and released last month, made it clear that much additional work was needed by PHMSA and TSA to ensure the safety of the public and the environment.

I look forward to hearing from today's panelists on what additional progress is being made by these agencies to fully implement the PIPES Act and to address the concerns raised by the Inspector General's report.

Before I yield to Mr. Shuster, I ask that Members be given 14 days to revise and extend their remarks and to permit the

submission of additional statements and materials by Members and witnesses.

Without objection, so ordered.

I now yield to Mr. Shuster for his opening statement.

Statement by Congressman Jerry F. Costello
Committee on Transportation and Infrastructure
Subcommittee on Railroads
Hearing on Implementation of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006
June 25, 2008

Thank you, Madame Chairwoman. I am pleased to be here today as we discuss implementation of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006. I would like to welcome today's witnesses.

Pipeline safety and security is an important function and affects every state. Because of our location in the center of the country, Illinois has a number of pipelines carrying petroleum products, natural gas and other volatile liquids and we must ensure that operation, maintenance, and security are preserved.

The Pipeline and Hazardous Materials Safety Administration (PHMSA) has been working to implement many of the Department of Transportation Inspector General's recommendations. While I believe that is a good start and progress has been made, more coordination with TSA and continued progress needs to occur.

Again, thank you Madame Chairwoman for calling today's hearing.

Elijah E. Cummings

Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipeline and Hazardous Materials

"Implementation of the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006 (PL 109-468)"

June 25, 2008
10:00 a.m.
2167 Rayburn House Office Building

Opening Statement of Congressman Elijah E. Cummings

Madam Chair:

I thank you for calling this important hearing to enable us to examine the implementation of the Pipeline Inspection, Protection, Enforcement and Safety (PIPES) Act of 2006, (PL 109-468).

Our nation's pipelines are critical pieces of our national infrastructure used to move 64 percent of the energy commodities consumed in the United States.

Frankly, it is a testament to the safety of our nation's pipeline infrastructure that the only time we pay attention to our expansive pipeline networks is that rare occasion when a problem arises.

However, the safety of that system – which spans 2.2 million miles – can be ensured only through a strict regulatory structure, such as that provided for in the PIPES Act of 2006.

Importantly, the PIPES Act grants the Pipeline and Hazardous Materials Safety Administration (PHMSA) the authority to order pipeline operators to take corrective action to remedy any condition that poses a threat to public safety, property, or the environment.

There are, however, a number of issues concerning the implementation of the PIPES Act that I hope our hearing will examine.

For instance, I am interested to learn why PHMSA has failed to implement the Technical Assistance Grant program provided in the PIPES Act, as well as why PHMSA is apparently deviating from the provisions of the Act that subject all low-stress hazardous

liquid pipelines to the same standards and regulations as other pipelines carrying hazardous liquids.

I look forward to hearing the testimony of today's witnesses and any recommendations they may have to further improve the safety and reliability of our pipeline systems. Thank you and I yield back the remainder of my time.

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REP. RICK LARSEN OPENING STATEMENT –
T&I Rails Subcommittee Hearing on "Implementation of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006"

I want to thank Chairwoman Brown and Ranking Member Shuster for holding this hearing today and for allowing me to sit in.

As many of the members here today know, pipeline safety is of great importance to me and my constituents. It was just over nine years ago, on June 10, 1999, that a pipeline explosion claimed the lives of two 10-year-old boys and an 18-year-old young man in my district in Bellingham, Washington.

Since that time we have made excellent progress in ensuring the safety of our nation's pipelines. Both the 2002 and the 2006 law make important changes to how we regulate pipelines in this country and have significantly improved the safety and reliability of our nation's pipeline infrastructure.

However, we must remain vigilant, and that's why today's hearing is so important.

I'd like to discuss some issues of concern with today's witnesses. My primary concern is PHMSA's draft criteria for Pipeline Safety Information Grants to Communities. When we created these grants in 2002 and reauthorized them in 2006, we intended them to be used for local communities who are or might be affected by pipelines to hire technical assistance to review and provide an independent analysis on a range of pipeline issues and proceedings. It appears to me that PHMSA has drafted the criteria for these grants more restrictively, by requiring that a community cosponsor with a pipeline operator, requiring a community to conduct a risk analysis, and requiring the project scope to include a high consequence area.

I also hope to discuss PHMSA's low-stress pipeline rule, reassessment intervals, and pipeline security.

I would also like to point out that the implementation of the 2002 and 2006 laws are going very well in some areas:

(1) PHMSA has done a very good job to rapidly increase the transparency of their enforcement process.
(2) It seems as if the pipeline map issue has been worked out.
(3) The 811 One-Call number has been a success.
(4) And operators have been very diligent in meeting the requirements of integrity management plans.

And on that note I will conclude my remarks.

STATEMENT OF
THE HONORABLE JAMES L. OBERSTAR
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS
HEARING ON
"IMPLEMENTATION OF THE PIPELINE INSPECTION, PROTECTION, ENFORCEMENT, AND SAFETY ACT OF 2006"
JUNE 25, 2008

Committee consideration of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 ("PIPES Act") came on the heels of some serious pipeline incidents in Prudhoe Bay, Alaska and in my district in Little Falls, Minnesota, where over 160,000 gallons of oil was spilled. Thankfully, there were no fatalities or injuries, but there was significant environmental damage. A driver had first spotted the rupture at 9:21 p.m. and reported that the oil was shooting 60 feet in the air, covering the tops of trees. The pipeline controller, which was about an hour away from the manual shut-off valves, with the permission of Koch Pipeline Company, had instructed a deputy in the local sheriff's office on how to shut the valves to prevent further spillage. Thankfully, their quick actions prevented what could have been a major catastrophe.

These events and others helped shape our work to reauthorize the pipeline safety program. It was a long process. There were some intense negotiations, but we were able to work through the issues and put together a good, bipartisan, pro-safety bill.

We required each gas and hazardous liquid pipeline operator to develop and implement a human factors management plan, which must include a maximum limit on hours of service for pipeline controllers and other measures to reduce risks associated with human factors. The plan must be submitted to the Secretary of Transportation for review and approval.

We 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.

We required gas pipeline operators to install excess flow valves on all new and replaced single-family residence lines, as the National Transportation Safety Board ("NTSB") recommended in its Most Wanted List. We required the Pipeline and Hazardous Materials Safety Administration and pipeline operators to implement a number of other NTSB recommendations issued in recent reports.

We ensured that low-stress hazardous liquid pipelines will be subject to the same standards and regulations as other hazardous liquid pipelines. Under the prior law, there was an exemption from regulation for low-stress pipelines. The PIPES Act regulates them (with a few minor exceptions) and ensures that these pipelines will have to be cleaned, inspected, and repaired at specified intervals.

We increased the number of Federal pipeline safety inspectors at the Department of Transportation 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.

We required the Secretary to provide to the public a monthly update of all gas and hazardous liquid enforcement actions taken by the Secretary, and include in each update identification of the

operator involved in the enforcement activity, the type of alleged violation, the penalty or penalties proposed, any changes in case status since the previous summary, the final assessment amount of each penalty, and the reasons for a reduction in the proposed penalty, if appropriate.

And, on the security side, we required the Inspector General of the Department of Transportation 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.

It has been more than 18 months since enactment of the PIPES Act, and while the Pipeline and Hazardous Materials Safety Administration ("PHMSA") has made some progress on implementing the law, some statutory mandates are past due. Section 9 of the Act, for example, required the Secretary to issue a final rule by December 31, 2007 that prescribed minimum standards for integrity management programs for distribution pipelines and required operators of natural gas distribution systems to install excess flow valves on single family residence service lines in certain circumstances. PHMSA didn't issue a Notice of Proposed Rulemaking ("NPRM") on the mandate until late last Friday.

Section 4 of the Act required PHMSA to issue a final rule by December 31, 2007 that subjected 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 an 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.

Section 19 of the Act required PHMSA to issue a final rule by December 31, 2007 to implement all the recommendations contained in the NTSB's November 2005 report entitled "Supervisory Control and Data Acquisition (SCADA) in Liquid Pipelines." The report calls for (1) implementation of the American Petroleum Institute's Recommended Practice 165 for the use of graphics on supervisory control and data acquisition screens; (2) implementation of a standard for pipeline companies to review and audit alarms on monitoring equipment; and (3) implementation of standards for pipeline controller training that include simulator or noncomputerized simulations for controller recognition of abnormal pipeline operating conditions, in particular, leak events. PHMSA has failed to issue even an NPRM, much less a final rule, on these important NTSB recommendations. This section and section 12 of the Act were two of my main priorities for the pipeline safety reauthorization bill.

Section 12 of the Act addresses an issue that has remained on the NTSB's Most Wanted List of Safety Improvements for almost a decade: fatigue. In 1999, the NTSB conducted a comprehensive review of all transportation accidents reported to the U.S. Department of Transportation modal administrations over a 10-year period. As a result of that review, the NTSB issued a recommendation to the Office of Pipeline Safety (now PHMSA) to establish within two years scientifically based hours-of-service regulations, which set limits on hours of service, provide predictable work and rest schedules, and consider circadian rhythms and human sleep and rest requirements.

PHMSA failed to implement that recommendation, so when we began work on the pipeline safety reauthorization bill, I insisted that this issue be addressed and it was addressed. Section 12 of the Act directs PHMSA to issue a final rule by June 1, 2008 that requires operators of gas and hazardous liquid pipelines to develop, implement, and submit to the Secretary (for approval) a human factors management plan designed to reduce risks associated with human factors, including fatigue, in each control center for the pipeline. Each of those plans must include a maximum limit on the hours of service for individuals employed as controllers in a control center for the pipeline.

To my dismay, the June 1 deadline for issuing this important rule has come and gone. This concerns me. The NTSB has noted in many of its accident investigation reports that fatigue is difficult to detect, particularly when the victims are deceased. The NTSB reviews the statements of other workers and witnesses, the hours worked and slept in the days leading up to the accident, and the time at which the accident occurred, but there is no chemical test for identifying the presence of fatigue as there is for identifying the presence of drugs or alcohol; hence, I believe – and I believe the NTSB would agree – that fatigue is a factor in far more accidents than has been reported.

We are 18 months into the reauthorization bill. There's another six months left in this Administration, and there will be a transition time with a new Administration. I have concerns about this rule getting done. I'd like to get a sense from you, Mr. Johnson, today about when you think we will see something on this issue from your agency and on the other overdue statutory mandates contained in the bill.

UNITED STATES DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

Oversight Hearing on

The Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006
Before the
Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines, and Hazardous Materials
United States House of Representatives

Written Statement of Carl T. Johnson
Administrator
Pipeline and Hazardous Materials Safety Administration
U.S. Department Of Transportation

Expected Delivery 2:00 p.m.
June 25, 2008

WRITTEN STATEMENT OF CARL T. JOHNSON
ADMINISTRATOR
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS
UNITED STATES HOUSE OF REPRESENTATIVES

June 25, 2008

I. INTRODUCTION

Chairman Oberstar, Ranking Member Mica, members of the Committee, thank you for the opportunity to appear today. I am pleased to discuss the progress of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) in advancing safety since the passage of the Pipeline Inspection, Protection, Enforcement and Safety (PIPES) Act in December, 2006. I am Carl Johnson, the PHMSA administrator. Accompanying me is Stacey Gerard, Chief Safety Officer and Assistant Administrator of PHMSA.

As quickly as the months have passed for PHMSA since enactment of this important program reauthorization, I realize the months remaining in my term are passing even more quickly. I remain committed to making this a great year for PHMSA. We will continue to accomplish the most important safety priorities and realize our agency potential to provide the most critical protections for the American people while our nation's reliance on the safe transportation of energy and hazardous materials increases.

II. BUILDING A GREAT ORGANIZATION

The enormity of PHMSA's mission – its complexity and reach into the lives of every citizen – makes it imperative that we are positioned to be successful. In February, the President forwarded to Congress the FY 2009 budget, the first budget PHMSA prepared since the passage of the PIPES Act. This budget frames our plan to get the resources needed to address the pipeline safety challenges the nation faces and that the PIPES Act recognizes. The resources requested will help us meet the intent of Congress to help provide states with more resources for oversight of the entire 1.9 million miles of infrastructure under their jurisdiction, help all pipeline safety stakeholders reduce damage to pipelines and help PHMSA build the capability to inspect pipelines and enforce pipeline safety requirements to the full extent needed.

The completion of PHMSA's strategic plan, in August 2007, drives not only our budget request, but virtually all the actions of the agency. This plan makes our job easier. It focuses on building our capability to make best use of information to drive down risk and guides the decisions we make – not only to improve the performance of PHMSA, but the entire hazardous materials transportation system. PHMSA strives to be a model agency – one that inspires confidence in our stakeholders because we have a risk-based rationale to guide our work that is transparent, meaningful, and easy to understand.

III. IMPLEMENTING THE PIPES ACT

The PIPES Act set out an ambitious agenda for PHMSA, and I am pleased to report that we have taken action on almost every section, from improving data, to setting standards, to more robust and transparent enforcement. Within months after the Act was signed into law, we launched our enforcement transparency website and implemented the executive signature requirement for integrity management performance reports. And by 2008, we took new actions on damage prevention; issued a rulemaking for clarifying our jurisdiction to protect environmentally sensitive low-stress pipelines; issued an interim final rule on emergency waivers and safety orders; worked with our State partners to draft the notice of proposed rulemaking on Distribution Integrity Management, including the excess flow valves requirement; issued an advisory bulletin on direct sales lines; finalized a rulemaking proposal addressing control room management, including the National Transportation Safety Board's recommendations for Supervisory Control and Data Acquisition (SCADA); and worked with the Department of Energy and Transportation Security Administration to draft and review the Petroleum Capacity Market study. While we still have more work to do, we are committed to full implementation of the PIPES Act.

IV. STRENGTHENING AND REPORTING ON ENFORCEMENT

Section 6 of the PIPES Act requires us to provide monthly updated summaries to the public of all enforcement actions. On May 1, 2007—five months after the passage of the Act, we launched our enforcement

transparency website. We do not merely post summaries of our enforcement actions. We provide access to copies of the actual enforcement documents filed by PHMSA and the operators' responses. We provide a brief narrative describing how each part of our enforcement process works, the penalties assessed, and the recent enforcement history of operators. All of this data is searchable by year, type of action, and other factors. The project is still in its infancy, and the history available and quality of the project will only improve with time. This enforcement information can be found at http://primis.phmsa.dot.gov/comm/reports/enforce/Enforcement.html.

Transparency in the enforcement process provides notice to the industry as to what sort of regulatory violations we consider serious, what types of enforcement actions such violations are likely to evoke from PHMSA, and what the costs of non-compliance are likely to be. We believe this is already leading to improved performance. Transparency also alerts the public as to what we are doing as public servants, what the compliance performance of operators has been, what progress is being made, and where this agency needs to improve. We subscribe to the theory that transparency, when coupled with useful and reliable data, will lead to self-correcting behavior, both on the part of the regulated community and on the part of government itself.

We have been impressed but not surprised with the public response to this transparency initiative. We are currently seeing 800 "hits" per day on the website from non-DOT sources – from industry, local governments, and interested citizens. The website is also making us, as a government

agency, more vigilant in making sure that our enforcement efforts are legally sound, that we are treating all operators fairly, and that the penalties we impose are commensurate with the impact of incidents and violations from which they arise.

Over the past few years, PHMSA has been engaged in a very active and productive period for pipeline enforcement. We are proud of these efforts and believe that they reflect a shared commitment by Congress and the Administration to use the full range of civil and criminal enforcement tools under the Federal Pipeline Safety Laws to maintain a safe and reliable oil and gas pipeline transportation system.

The following highlights some of our major enforcement activities over the past 18 months – reflecting actions taken from January 1, 2007 through May 31, 2008:

- We have initiated 368 pipeline enforcement actions, including nine Corrective Action Orders (CAOs), 90 Notices of Probable Violations, 125 Notices of Amendment, and 144 Warning Letters. The nine CAOs were issued in response to incidents causing fatalities or serious injury, hazardous liquid spills that damaged the environment, or other conditions posing serious threats to public safety or the environment. When serious incidents occurred, we immediately deployed investigators to the scenes and ordered the operators to reduce the operating pressure of their lines or shut them down completely until remedial action could be taken.

- The number of CAOs to which operators have satisfactorily responded, completing the compliance actions required by PHMSA, and allowing the agency to close the cases, has been increasing steadily since 2002. In each case, a hazardous facility has been made safe to operate.

- PHMSA continues to make full use of its penalty authority. In 2007, PHMSA proposed civil penalties of $4,288,800, a 39 percent increase from 2006 and the second highest amount since 2002. So far in 2008, we have proposed total civil penalties of $4,933,800.

- In July 2007, PHMSA and DOJ announced the settlement of a civil action against El Paso Pipeline Company, arising out of a tragic incident near Carlsbad, New Mexico, in which 12 people were killed. This settlement was reflected in a judicial consent decree that included a civil penalty of $15.5 million and injunctive relief worth $86 million. The El Paso case represents the largest judicial settlement ever brought under the Federal Pipeline Safety Laws.

- The single most intensive enforcement effort PHMSA undertook since the passage of the PIPES Act has been our work in Alaska. The 2006 BP oil spills on Alaska's North Slope demonstrated the vulnerability of this environmentally sensitive area to major oil spills and the country's vulnerability to disruptions in critical supplies of crude oil from Alaska. As a result of these incidents, PHMSA is working with various state and federal agencies to develop a new regulatory and enforcement partnership, based on the concept of an

integrated "One Plan" meeting the requirements of all agencies that share the responsibility for protecting the nation's oil supply from the North Slope.

As part of this work in Alaska, PHMSA has:

- Issued a CAO and three Amendments directing BP Exploration (Alaska), Inc., to correct systemic problems in its pipeline system on the North Slope. As reflected in these orders, BP committed to spending $260 million for the replacement of 16 miles of oil transit lines where the 2006 failures occurred.

- Signed a letter of intent with the State of Alaska Department of Natural Resources to improve state-federal cooperation in the oversight of the oil and gas pipeline industry throughout the state.

- Provided technical assistance to the U.S. Attorney for Alaska and the Environment and Natural Resources Division of DOJ in their prosecution of a criminal case against BP, in which the company pled guilty last November to criminal negligence related to the maintenance of the Prudhoe Bay oil transit lines. In that case, BP agreed to pay a penalty of $20 million for the 2006 spills.

As our regulatory focus has changed, so has our enforcement focus. It is becoming increasingly complex and innovative. Our work in Alaska is just one example where we "think outside the box" to devise enforcement solutions that better comport with the agency's safety goals. It means that

we must forge new relationships among regulatory agencies and other stakeholders, such as the one we're building in Alaska, to design solutions that fit the circumstances. We are undertaking enforcement actions that seek to help instill a genuine "safety culture" within companies that have demonstrated a "tin ear" to placing safety first. We strive to be leaders in this effort. We use our full range of enforcement options to encourage operators to do more than meet the letter of the law and to make our nation's pipeline system even safer.

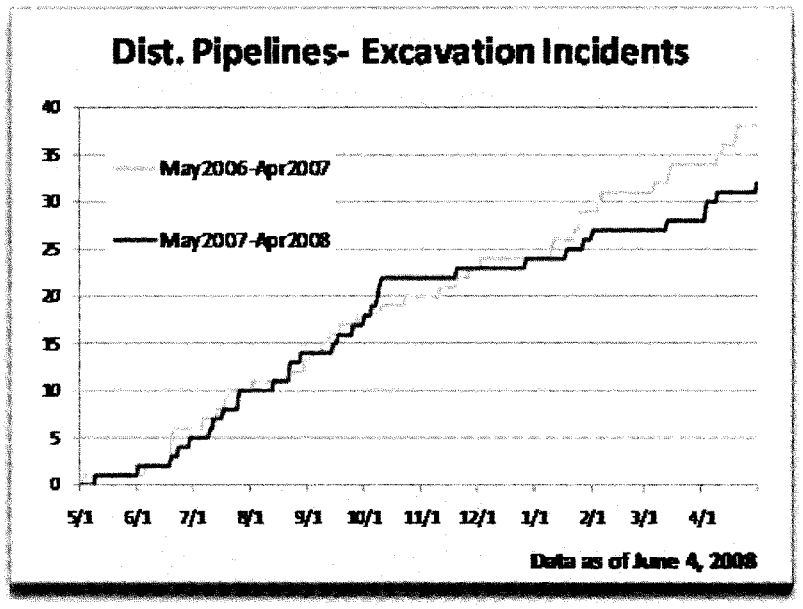
Beyond our focus in the past year on enforcement vigor and transparency, we have been working on all the statutory mandates of the PIPES Act.

V. PROVIDING NEW SUPPORT TO STATES IN THEIR OVERSIGHT RESPONSIBILITIES

At the top of our safety priorities is strengthening our National damage prevention efforts. I would like to take this opportunity to mention that one of our key initiatives to protect the underground infrastructure just received the Silver Anvil Award. The award is for the National 811-Call Before You Dig Public Awareness Campaign that was launched a little over a year ago through our partnership with the Common Ground Alliance (CGA). This prestigious award of the Public Relations Society of America recognizes the collaborative nature of the work and efforts of thousands of volunteers that are promoting damage prevention information and awareness to millions of Americans. Thanks to the support of this committee, the Congress, and the many volunteers who work for the CGA we continue to see a decline in excavation incidents.

Section 2 of the PIPES Act authorizes more resources for state oversight of the roughly 1.9 million miles of infrastructure under their jurisdiction and establishes a new grant program to help all pipeline safety stakeholders reduce damage to pipelines. The President's FY 2009 budget request makes important strides to increase funding to state agencies. Our request would increase federal funding by nearly 50 percent making substantial progress toward the 80 percent average federal match authorized in the PIPES Act. This increase helps reduce the burden on states that have taken on more statutory requirements. PHMSA has requested a $2 million increase for additional inspection and enforcement positions to address Congressional and Administration priorities. Similarly, in the area of damage prevention assistance, we asked for resources to help states achieve performance of all nine elements of the comprehensive damage prevention program set forth in the Act. We are very actively involved in advancing damage prevention efforts. We solicited our first round of damage prevention grant applications in November 2007, offering a maximum of $100,000 per grant. We are making awards to 15 states this year.

Three-fourths of all human consequences from pipeline failures occur in the distribution systems. Sixty percent of these failures are caused by excavation damage.



VI. REGULATORY MANDATES

PHMSA has addressed all the additional statutorily required initiatives in the PIPES Act. The PIPES Act imposes three significant regulatory mandates, which we are addressing in three rulemaking proceedings:

- Distribution Integrity Management, including excess flow valves (EFVs) (PIPES ACT Section 9);

- Low-Stress Pipelines (Section 4); and,

- Control Room Management, addressing the risk of fatigue and other human factors and SCADA requirements (Sections 12 and 19).

1) Distribution Integrity Management

Section 9 of the PIPES Act requires PHMSA to prescribe minimum standards for integrity management programs for distribution pipelines, including requiring operators to install EFVs in certain circumstances. The notice of proposed rulemaking was published on June 25. In accordance with the PIPES Act mandate, the proposed rule will extend new requirements to the thousands of small and large companies that deliver natural gas over the 1.9 million miles of pipeline serving local gas customers. The rule will require operators to develop and implement plans for monitoring and improving the condition of their systems, in addition to complying with current code requirements.

In the meantime, we have worked with our state partners to encourage immediate compliance with the EFV requirement in Section 9 of the PIPES Act. We believe that most companies already are installing EFVs on new service lines in accordance with the PIPES Act standards. These devices will reduce the risks associated with excavation-related damage and other sudden failures on distribution lines.

While these activities are important, getting ready for a distribution integrity management program is a lot more than a rule. It takes a system – and we built one. We have consensus standards, guidance, training, IT

systems, and data to inform our understanding of risk and provide effective oversight. We are especially mindful of the increased oversight requirements associated with the program. Getting 50 states to implement a performance standard takes a lot more preparation than preparing a single federal entity.

2) Protecting Unusually Sensitive Areas from Rural Onshore Hazardous Liquid Gathering Lines and Low-Stress Lines

Section 4 of the PIPES Act requires PHMSA to issue regulations for low-stress hazardous liquid pipelines. On June 3, we published Phase 1 of the final rule which covers the low-stress lines that pose the highest risk to the environment. With that step completed, we are in the process of completing the second phase of the final rule.

3) Control Room Management

Section 12 of the PIPES Act mandated that PHMSA issue regulations requiring operators to develop, implement, and submit for DOT approval a human factors management plan to reduce risks associated with human factors, including a maximum limit on the hours of service for controllers.

Section 19 of the PIPES Act requires PHMSA to issue standards to implement National Transportation Safety Board recommendations concerning SCADA operation, including: (1) use of graphics; (2) review and audit of alarms on monitoring equipment; and (3) pipeline controller training. PHMSA intends to address Sections 12 and 19 through one

rulemaking which will help controllers recognize and move quickly to act on abnormal events, mitigating their consequences. The Secretary of Transportation has transmitted the notice of proposed rulemaking to the Office of Management and Budget and we hope to publish it in the near future.

While developing the proposed rule, we also have been participating in the development of a National consensus standard, in which all the pipeline trades and state agencies are involved. This American Petroleum Institute (API) standard will address the major areas of Control Room Management, providing further advice on safe practices, including roles and responsibilities, shift management and turnover, operations, education, shift length and rotation and fatigue management.

In addition to significant rulemakings there are other regulatory requirements. Section 13 of the PIPES Act requires PHMSA to issue rules for the use of safety orders as an additional option for addressing pipeline integrity threats. We published the interim final rule on March 28, establishing the procedural regulations for issuing safety orders. Operators will be provided with notice and opportunity for informal consultation to determine the measures necessary to mitigate the concern. This new enforcement option puts us in a better position to ensure operators are addressing longer term conditions before they become immediate hazards. In keeping with our policy of transparency in all of our enforcement actions, all safety orders will be available to the public on our website.

In each of these projects over the past year, PHMSA found ways to strengthen our original concepts and added additional elements to the initiatives. Each of these projects has also benefited from public dialogue in the past year intended to enrich information available to us as we formulate the regulatory solutions.

VII. PUBLIC INFORMATION TO COMMMUNITIES

Section 5 of the PIPES Act requires PHMSA to award the first three community information technical assistance grants as demonstration grants, up to $25,000 each. We have developed criteria and are currently working with the House Energy and Commerce Committee and public interest groups to finalize them. Additionally, we have been working with pipeline operators to develop concepts for this project which we could "pilot test" – operators volunteer to develop information on their own from which we could derive experience that could help us develop criteria to use as basis for awarding grants in the future. We see this initiative as a partnership between operators and communities. Our aim is to have communities identify information they need on operators' performance, to have operators make that information understandable, and hopefully to use that information to benefit the safety of the community.

PHMSA has conducted other activities to inform the public and engage public interest and participation in all of our initiatives. We funded publicly accessible, internet broadcast viewing of two pipeline events sponsored by the Bellingham Trust, including a focus on safer land use planning. We have made one grant and may make others to professional

associations of county and city government officials to represent the public in the Pipelines and Informed Planning Alliance (PIPA). PIPA is an initiative organized by PHMSA to encourage the development and use of risk-informed land use guidelines to protect pipelines and communities.

A companion effort is helping communities understand where pipelines are located, who owns and operates them, and what other information is available for community planning. Following the passage of the PIPES Act, PHMSA worked with the Department of Homeland Security/ Transportation Safety Administration to resolve concerns about security sensitive information. Vital information that communities need for land use, environmental, and emergency planning around pipelines is now publicly available through PHMSA's National Pipeline Mapping System (NPMS). We continue to work with states, industry and other stakeholders to make the NPMS information more accurate and useful. Additionally, we have completed a review of thousands of operators' public education programs and provided operators with feedback.

VIII. STUDIES: LEAK DETECTION AND INTERNAL CORROSION

1) Leak Detection

Section 21 of the PIPES Act mandated PHMSA to evaluate leak detection technology and submit a report to Congress on the effectiveness of leak detection systems utilized by operators of hazardous liquid pipelines. PHMSA examined the issue, drafted a report, and posted it for public

comment at the end of last year. We have invested in several research projects intended to improve the sensitivity of leak detection technology, particularly for hazardous liquid operators. As we work on advancing this technology, we believe we have adequate oversight in place to evaluate the leak detection capability of individual operators and have exercised authority as needed to compel system upgrades where warranted. The report was sent to Congress on June 23.

2) Internal Corrosion

Section 22 of the PIPES Act mandated PHMSA to review the adequacy of internal corrosion control regulations and submit a report to Congress. PHMSA conducted a thorough review of the Federal pipeline safety internal corrosion control regulations, accident history, our research findings, and activities in consensus standards organizations. Our review indicates that our existing standards to protect against internal corrosion are generally sufficient to allow PHMSA to achieve safety and environmental protection goals. The report was sent to Congress on June 23.

IX. PIPELINE SECURITY

Section 23 of the PIPES Act asked the Department's Inspector General (OIG) to assess DOT's implementation of the annex to the Memorandum of Understanding (MOU) with the Department of Homeland Security related to pipeline security, and transmit a report to Congress. After the initiation of the MOU annex, several related requirements for PHMSA and the Transportation Security Administration (TSA) were enacted through

passage of the 9/11 Commission Act. Although many of those requirements were previously included in the interagency work plan, other provisions were new, with ambitious timeframes.

The OIG report recognized the relationship of the 9/11 Commission Act requirements to the prior work commitments with TSA. The OIG made the following three recommendations: 1) Finalize the action plan for implementing the annex provisions and program elements and effectively execute the action plan; 2) Amend the annex to delineate the roles and responsibilities of PHMSA and TSA in overseeing and enforcing security regulations for LNG 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 9/11 Commission Act. PHMSA is acting on all three recommendations. PHMSA has formalized the security roles and responsibilities of each agency by the signing of the Annex to the Memorandum of Understanding between the Departments of Homeland Security and Transportation. TSA has the lead in pipeline security matters, and PHMSA supports TSA in its activities, as required. In terms of the delineation between the two agencies' security roles and responsibilities in oversight of Liquefied Natural Gas (LNG) Facilities, PHMSA has an MOU with the Federal Energy Regulatory Commission and the U.S. Coast Guard that discusses jurisdictional issues, including security, among the parties. These three agencies meet quarterly to discuss issues arising from the MOU including potential conflicts in security oversight between PHMSA and TSA. Finally, the interagency work group has adjusted its plan by ranking 9/11 Commission Act mandates with the highest priority. We continue to work with TSA to

address all of these mandates, and on a day-to-day basis, we work together to exchange information about pipeline safety and security incidents; infrastructure issues; and other areas of mutual interest.

X. Risk Based Approach to Seven-Year Assessment Intervals

Section 25 of the PIPES Act required PHMSA to review and comment on the General Accountability Office (GAO) report on the seven-year assessment interval and send Congress legislative recommendations necessary to implement the conclusions of that report. PHMSA has reviewed our experience with gas transmission operators' implementation of integrity management and the GAO report on this subject. We reported our findings to Congress on this topic last year and recommended that Congress amend the law to provide us the authority to promulgate risk based standards for pipeline reassessment. As a risk-based, data driven organization, we continue to believe that a scientific basis is the best way to inform safety decisions and the allocation of safety resources. We have demonstrated that PHMSA and our state agency partners have the ability, experience, and training to review the adequacy of engineering justification that would be presented to us by operators seeking to vary the reassessment interval. In January we held a public meeting on the technical basis for making decisions on assessment intervals. The bottom line is that we believe these decisions should be made on a case-by-case basis, one operator at a time, and segment by segment, so that relevant operating characteristics can be considered along with individual operator performance.

XI. RELIABLE FUEL SUPPLY PRESENTS NEW CHALLENGES

The President has set a target to reduce petroleum consumption by 20 percent by 2017, and Congress enacted his proposal to do so. We are committed to work toward this goal and will address the challenges that this goal presents. The first is the challenge associated with managing a new set of products with properties we have not managed on a large scale in pipeline transportation – products like ethanol, hydrogen, carbon dioxide and potentially other biofuels. Some of these we are familiar with, but we expect the scale of operations to grow. Others, like ethanol, bring new technical issues really have not confronted to the extent now contemplated. The second challenge is the need to increase the reliability of the infrastructure in place and, if possible, to get more capacity from it – more throughput. Thirdly, we face a pipeline building boom for the first time in decades, bringing the challenge of new designs, new materials, and new technologies to review and evaluate. In FY 2007, PHMSA spent 14 percent of its field inspection time overseeing new construction, compared to 2 percent the prior year.

A related challenge is the need to work with the communities through which new products will be transported to explain our safety program, the protections we enforce, and most importantly, how to respond in the event of an incident. Pipeline operators are moving quickly to be ready to transport large volumes of ethanol, either in existing pipelines, retrofitted and dedicated to ethanol service, blended with other petroleum products or in batches, or in new pipelines designed for the purpose. Ethanol poses

very unique emergency response challenges, and PHMSA is responsible for helping communities prepare.

While we always work to set standards for safe transportation, we also work to remove impediments and any unnecessary regulatory overlaps. We believe there are opportunities for harmonizing by examining what various regulatory structures try to achieve, where there are gaps, where there are overlaps and where there are occasions to simplify. Essentially, we would like to have "one plan" that works to meet similar objectives with one approach to assess risk, prioritize risk control, and evaluate effectiveness. We have been testing this concept in Alaska as we work with state and federal agencies to plan for improved safety performance in the future. The model of the Joint Pipeline Office certainly has bearing on broader Alaska pipeline operations and applications for the Alaska Gas project, on which we have design review responsibility already. We think there are broader opportunities for simplification to a policy of "no gaps, no overlaps" in other areas of PHMSA responsibility.

In the midst of the pipeline construction boom, recruiting and retaining qualified pipeline engineering staff is especially challenging. It is taking us longer to fill vacancies than in the past; however, we are on track to fill our vacancies in 2008. The surge in pipeline construction is occurring at the same time many experienced pipeline engineers and builders are retiring. Industry is competing for the same talent we are. To meet this challenge, PHMSA is implementing new ways of attracting talent, including remotely deploying employees at regional locations where they can telework and address issues directly in the field.

We have worked hard to step up to all these challenges. We have notified the public of our intent to regulate pipeline transportation of ethanol and other new fuel products not previously covered by our regulations. We continue to work with individual operators, identifying safety concerns that must be satisfied, both with the infrastructure and with the surrounding community. We work with other federal agencies to think about the transportation implications from the inception of marketing new fuels, as part of a systemic planning process. We work with other countries to benefit from their experience. We collaborate with the pipeline industry, the renewable fuels organizations, and others like emergency responder organizations and the National Commission on Energy Policy, to investigate and solve technical challenges.

Consistent with these efforts, PHMSA has investigated safety issues involved in allowing existing or proposed natural gas transmission pipelines to operate at higher pressure. Based on extensive examination by PHMSA, we have determined that improved technology in metallurgy and pipe manufacture, and improved pipeline life cycle management practices now give us the opportunity to ease supply constraints by allowing pipeline operating pressure to increase enough to boost capacity by as much as 10 percent. Increasing capacity also enhances pipeline efficiency. Higher operating pressures are consistent with practices in Canada, the United Kingdom and other countries.

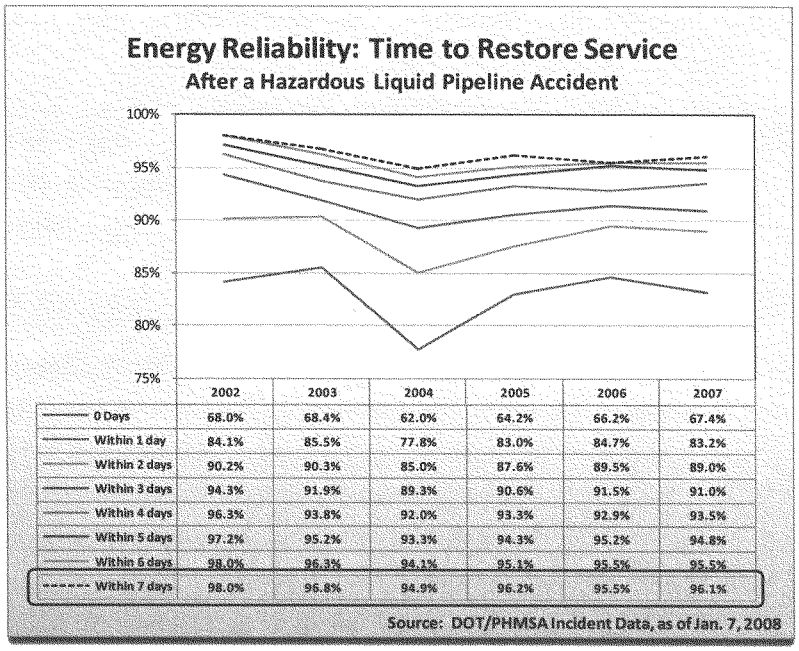
We evaluated requests for special permits from companies seeking to operate existing or proposed pipelines at higher pressure. In granting the

requested special permits, we required operators to demonstrate compliance with certain design specifications and imposed conditions requiring adherence to additional safety standards. In addition to allowing public comment on the requests for special permits, PHMSA held a public meeting and brought stakeholders into the development of the permitting criteria. Building on this experience, PHMSA recently proposed revising its regulations governing gas transmission pipelines to allow increased capacity. This will encourage the use of newer pipeline materials and associated safety standards, resulting in a net positive effect on overall pipeline safety.

In accordance with our PIPES Act authorization, PHMSA has worked with the Department of Energy and the Department of Homeland Security to investigate "chokepoints" in the liquid pipeline transportation system and consider the consequences of operations disruptions. We have completed the analysis and would be happy to brief the Committee or staff on our findings and conclusions.

Any accident or incident poses a potential disruption to the delivery of energy supplies. While safety is always first, we also are keenly aware of the need for reliable energy supply in the U.S. We work closely with industry and our state partners to help safely restore service after a hazardous liquid pipeline accident, and 95 percent of the time this has been achieved within seven days. With integrity management programs improving our understanding of pipeline condition and new technology available with more accurate diagnostic capabilities, we can expedite the process to make sure these systems are safe to operate. In this way, we

help make sure energy products are delivered not only safely but also reliably.



	2002	2003	2004	2005	2006	2007
0 Days	68.0%	68.4%	62.0%	64.2%	66.2%	67.4%
Within 1 day	84.1%	85.5%	77.8%	83.0%	84.7%	83.2%
Within 2 days	90.2%	90.3%	85.0%	87.6%	89.5%	89.0%
Within 3 days	94.3%	91.9%	89.3%	90.6%	91.5%	91.0%
Within 4 days	96.3%	93.8%	92.0%	93.3%	92.9%	93.5%
Within 5 days	97.2%	95.2%	93.3%	94.3%	95.2%	94.8%
Within 6 days	98.0%	96.3%	94.1%	95.1%	95.5%	95.5%
Within 7 days	98.0%	96.8%	94.9%	96.2%	95.5%	96.1%

XII. WE ARE ADVANCING SAFETY IN MANY WAYS

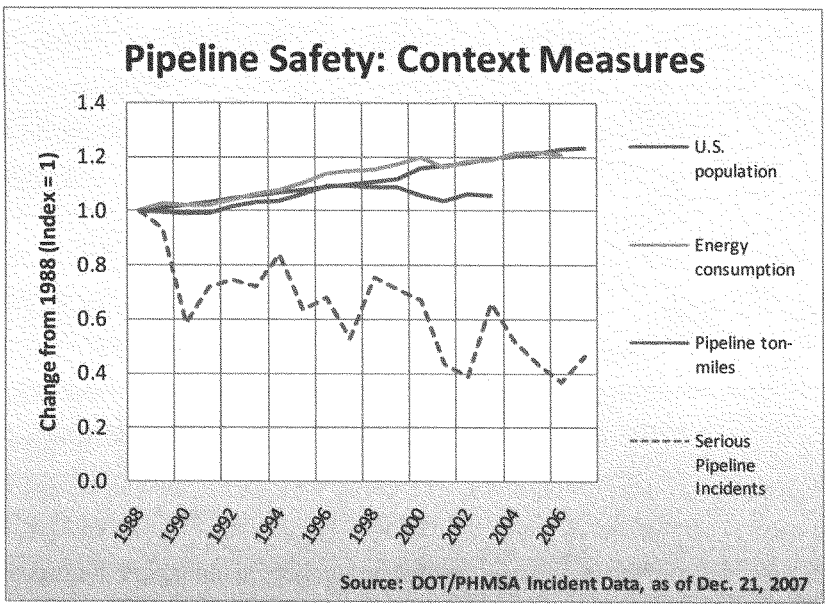
I believe we are doing just what we have promised in our Strategic Plan. Since the passage of the PIPES Act, we are making better use of information to improve safety. Perhaps most importantly, we have

improved our ability to investigate safety issues – not just incidents, but the first indication of safety concerns. It is a priority for us to put more resources into investigations, preparing all our inspection and enforcement staff to understand the concept of root cause of pipeline failures and revamping our inspection and enforcement efforts to be even more effective.

Improving our investigative process has proven critical, for example, in guiding our oversight of all pipeline infrastructure in Alaska. We have been increasing our resources in Alaska and stepping up efforts to assist the state through the Petroleum Systems Integrity Office and the Joint Pipeline Office. This assistance includes directly delivering training from our Transportation Safety Institute, sharing data bases and information systems, and facilitating the inclusion of Alaska officials in meetings with other states through the National Association of State Pipeline Safety Representatives.

Making better use of information guides all our actions. Most importantly, it guides our targeting of inspections and leads us to put special emphasis on operators whose performance needs particular improvement. We work with companies to identify areas of concern and determine the appropriate level of effort needed for remediation. We have been particularly challenged this year working to respond to integrity issues for several pipelines of strategic importance to our national fuel supply which have experienced failures. Investigation is necessary to determine the extent to which the cause of failure is systemic and what is needed to restore safe operations. Unfortunately, in the past year, six Americans lost their lives

in pipeline incidents. More fortunately, our work with technology to advance operators' abilities to improve integrity, including the assessment of non-piggable pipelines, has achieved important results. Despite these incidents noted, the record in pipeline safety is good. Over the past 20 years, all the traditional measures of risk exposure have been rising – population, energy consumption, pipeline ton-miles. At the same time, the number of serious pipeline incidents – those involving death or injury – has declined by an average of ten percent every three years. This is "no accident." It's a reflection of aggressive programs to reduce risk and protect the public. We aim to continue this long-term trend.



We hope that the success of integrity management programs will continue to drive down the number of serious pipeline incidents and will help us make important inroads in greater safety in distribution systems. In fact, we believe this approach can benefit the entire hazardous materials transportation system.

We routinely examine operators' safety performance and identify what factors in companies' operations make the difference in improving their records. Further, we review the impact of different regulatory programs on safety in other industries. We inevitably come to the conclusion that individual corporate executives' commitment to safety and their effective management of information to drive down risk are critical. As a result, when we take action with an individual company with a poor performance record, we have begun to institute additional management requirements to help build a better "safety culture." At the same time, at the national level, in our work with trade associations, we are promoting focus on safety culture as a way to improve performance. At the national level, our efforts are intended to inspire improved performance – we are not considering regulating "safety culture." On an individual, remedial basis, however, we get more prescriptive. We detail how the company needs to create an environment in which risk information is brought forward and rewarded, how risk information is managed and tracked, and what is the adequate scientific basis for assessing and deciding how risk and control are measured. We are concerned about the transparency of this process and how safety and profitability values are balanced.

XIII. Conclusion

PHMSA appreciates the opportunity to report on the status of our progress with PIPES Act implementation and the overall pipeline safety program. We share your commitment to improving safety, environmental protection, and the reliability of our nation's pipeline system.

Thank you. I would be pleased to answer any questions you may have.

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UNITED STATES DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION

Statement of

JOHN SAMMON
ASSISTANT ADMINISTRATOR
TRANSPORTATION SECTOR NETWORK MANAGEMENT

Before the

SUBCOMMITTEE ON RAILROADS, PIPELINES, AND
HAZARDOUS MATERIALS
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

UNITED STATES HOUSE OF REPRESENTATIVES

JUNE 25, 2008

Good afternoon Chairwoman Brown, Ranking Member Shuster, and distinguished members of the Subcommittee. Thank you for the opportunity to appear today to discuss the ongoing collaboration between the Transportation Security Administration (TSA) of the Department of Homeland Security (DHS) and the Pipeline and Hazardous Materials Safety Administration (PHMSA) of the Department of Transportation (DOT). Our respective agencies have different, but complementary roles and responsibilities to protect the security and safety of our Nation's pipelines.

Ongoing Threat

The effort to protect the security of transportation systems remains as important now as it ever has been since September 11, 2001. The Annual Threat Assessment of the Director of National Intelligence released on February 5, 2008, confirmed that terrorists continue to pose significant threats to the United States. Terrorists are likely to continue to focus on prominent infrastructure targets with the goal of producing mass casualties and significant economic aftershocks. Oil and gas pipelines continue to be the targets of terrorists outside and inside the United States. In June 2007, the U.S. Department of Justice arrested members of a group plotting to destroy fuel storage tanks and pipelines servicing the John F. Kennedy (JFK) International Airport in New York. This threat is real and evolving. We know they are working to defeat us, and we must remain vigilant.

The Role of the TSA In Pipeline Security

To understand the context in which the TSA exercises its authority in the security of pipeline systems, it is important to review the transition of security responsibilities from PHMSA, and

its predecessor, the Research and Special Programs Administration, to the recently created TSA and DHS.

After the tragic events of September 11, 2001, the Congress passed and President Bush signed in November 2001, the Aviation and Transportation Security Act (ATSA, (P.L. 107-71)) establishing the TSA within the DOT. Although the most visible change pursuant to ATSA occurred in aviation security, the statute conferred upon the TSA the lead responsibility for security in all modes of transportation, including pipelines. The ATSA specified a range of powers and duties for TSA, such as establishing security measures, enforcement, security oversight, threat assessment, and intelligence management. The modal agencies within the DOT retained responsibility and authority for the safety of their respective modes of transportation.

On November 25, 2002, President Bush signed the Homeland Security Act of 2002 (P.L. 107-296), creating the DHS. The Act transferred the TSA from the DOT to the DHS—the TSA being one of many agencies and components comprising the new Department.

On December 17, 2003, President Bush issued Homeland Security Presidential Directive 7 (HSPD-7), which provided a national policy for Federal departments and agencies to identify and prioritize critical infrastructure and key resources (CI/KR) and to protect them from terrorist attacks. Under HSPD-7, the DHS has the lead role in coordinating the protection activities for certain sectors of critical infrastructure, specifically including pipeline systems. In recognition of the unique characteristics of each infrastructure sector and the value the modal agencies within the DOT can provide in this effort, HSPD-7 requires the DHS and the DOT to collaborate on all matters relating to transportation security and transportation infrastructure protection. The Directive further requires appropriate collaboration with our private sector stakeholders.

HSPD-7 also requires the DHS to coordinate and implement an overarching approach for integrating the Nation's many CI/KR protection initiatives. The National Infrastructure Protection Plan (NIPP), a multi-Department effort, was published in 2006 to meet this requirement. Under the NIPP, the TSA is designated the lead agency for the Transportation Sector, including pipelines. The NIPP required each sector to develop a Sector Specific Plan (SSP) that describes strategies for protecting CI. Executive Order 13416, signed by President Bush on December 5, 2006, further required annexes to the Transportation Sector SSP for each mode of transportation. The TSA fulfilled this requirement with the publication of the Transportation Systems Sector Specific Plan and the Pipeline Modal Annex (SSP Annex) in May 2007. The SSP Annex affirms the lead role of TSA while recognizing the role of the DOT, other Federal agencies, and industry stakeholders in the production of a plan that utilizes relative risk assessment and prioritization methodology to enhance security of CI/KR.

To facilitate the cooperation and coordination between the DHS and DOT in the development and deployment of transportation security measures that consider the safe and efficient flow of commerce, the two Departments entered into a Memorandum of Understanding (MOU) on September 28, 2004. The MOU recognizes the DHS as having primary responsibility for security in all modes of transportation. The MOU also recognizes the role of the DOT to

assist the DHS in developing security measures affecting transportation and the Parties shared regulatory responsibilities in certain areas of transportation security.

The MOU anticipated subsequent annexes to address particular matters governed by the MOU. On August 9, 2006, the TSA and the PHMSA entered into an annex (Annex) concerning pipeline security. The Annex further delineates the respective authorities and responsibilities of the TSA and the PHMSA and specifies certain communication and collaboration efforts between the two agencies by recognizing eleven "Program Elements," establishing a working group, and conducting coordination meetings.

Ongoing Collaboration between TSA and PHMSA

The TSA program office with the lead responsibility for pipeline security matters is the Pipeline Security Division (PSD) within the Transportation Sector Network Management organization. The TSA believes the communication and cooperation with the PHMSA is very good. The PSD staff and the PHMSA staff engage on a virtually daily basis. The interaction is open, frequent, and productive. Both agencies are active members in the Oil & Natural Gas (ONG) Government Coordination Council and the Pipeline Government Coordinating Council. Additionally, the TSA and the PHMSA participate in the ONG Critical Infrastructure Partnership Advisory Council in which governmental agencies, pipeline industry stakeholders, and other security partners collaborate on pipeline and CI security matters.

The Annex required the TSA and the PHMSA to develop a multi-year action plan to implement the specific Program Elements of the Annex. The Implementation Action Plan was completed on February 5, 2007. Given the ongoing and evolving threats to transportation security, the Implementation Action Plan is inherently a "living" document that will be continually updated and modified to reflect the changing threat environment. The joint-agency working group established by the MOU will continue to meet on at least a quarterly basis to monitor the implementation of the Plan and address new matters that arise.

Through the close coordination with the PHMSA and our vigorous outreach efforts to the pipeline industry stakeholders, the TSA believes we have made great progress to clarify within the industry the role of the TSA as having the primary responsibility for security and the PHMSA for safety matters. The industry stakeholders have indicated to the TSA that, with respect to pipelines, they understand the respective roles of the TSA for security and the PHMSA for safety.

As an example, TSA has hosted, in conjunction with Natural Resources Canada, a conference in each of the past three years that enhances government and pipeline industry domain awareness and facilitates a dialogue on pipeline security issues. The conference is attended by officials from the U.S. and Canadian governments; pipeline associations; pipeline operators; and representatives from the security, intelligence, and law enforcement communities. A fourth conference is scheduled to be held in Salt Lake City, Utah, on October 29-30, 2008.

Current Initiatives to Improve Security

Although the TSA was created less than seven years ago and the DHS was created five years ago, the efforts to improve the security of pipelines have grown significantly and effectively. I would like to highlight a few examples of our key program initiatives:

Pipeline Corporate Security Reviews. The centerpiece of the TSA's pipeline security program is the Pipeline Corporate Security Review (PCSR). Begun in 2003, PCSRs have enabled TSA to build relationships with pipeline operators, assess their corporate security plans and programs, and provide them with recommendations for improvement. TSA has conducted PCSRs on 91 of the top 100 pipeline systems. By the end of this calendar year, TSA will have completed PCSRs on 100% of the nation's top 100 pipeline systems.

Pipeline Employee Security Awareness Training: The TSA developed a 30-minute training CD using DHS-developed subject matter, but tailored specifically to an audience of pipeline operators. The training covers topics such as security measures, awareness of vulnerabilities, potential threats, and targeting. To date, TSA has delivered training CDs to over 300 companies, providing training to an estimated 61,000 pipeline employees.

Pipeline Security Smart Practices: The TSA's Pipeline Security Smart Practices reflect the lessons learned from PCSRs over several years. A qualitative and quantitative examination of this data, coupled with literature research of pipeline security measures, and consultation with the pipeline industry, identified smart practices operators can implement to promote an effective security program. This document is intended to assist operators in their security planning and the implementation of security measures to protect their facilities.

Cross-Border Pipeline Assessments: Canada is one of the world's largest producers and exporters of energy and is the top source for U.S. oil and natural gas imports. In 2006, Canada exported to the United States 2.3 million barrels per day of oil and petroleum products (11 percent of U.S. supply) and 3.6 trillion cubic feet of natural gas (16 percent of U.S. supply); and this energy is overwhelmingly moved by pipeline. The TSA has led and been performing an in-depth analysis on cross-border pipeline systems, as part of a team that included Natural Resources Canada, and private industry. Assessment teams of Canadian and U.S. subject matter experts in pipeline operations, control systems, infrastructure interdependencies, and assault planning visit critical cross-border pipeline infrastructure, identify security gaps, and recommend protective measures to address them. Pipeline operators have used the assessment results to target improvements to the security of their system. To date, six of the largest pipeline systems have been reviewed by joint U.S.-Canadian teams.

Going Forward with Pipeline Security

The TSA will continue our efforts to enhance the security of pipeline systems as directed by the NIPP, the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), (P.L. 110-53) and other statutory and Department requirements. The TSA has begun the process of updating security guidelines previously established by the DOT and will diligently

continue this effort as required by Section 1557 of the 9/11 Act. The TSA has established a process with milestones and timelines to ensure we meet the deadlines of other requirements from the 9/11 Act, to include the preparation of a pipeline security and incident recovery plan and any future formal rulemakings in collaboration with the DOT.

Conclusion

The TSA has been given clear authority and responsibility for the oversight and enforcement of the security for pipelines. However, we recognize that the success of this effort relies greatly on the close coordination and ongoing cooperation with the PHMSA, which brings industry knowledge to enhance the TSA's ability to improve security in a manner that is safe and allows for the efficient flow of commerce. Thank you for the opportunity to appear before you today and I would be happy to answer any questions that you may have.

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Before the Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines, and Hazardous Materials
United States House of Representatives

For Release on Delivery
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Wednesday
June 25, 2008
CC-2008-090

Actions Needed To Enhance Pipeline Security

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

Chairwoman Brown, Ranking Member Shuster, and Members of the Subcommittee:

We are pleased to be here today to discuss pipeline security issues and the actions taken by and needed from the Departments of Transportation (DOT) and Homeland Security (DHS) to enhance the security of the Nation's pipeline infrastructure.

This infrastructure is an elaborate network of approximately 2 million miles of pipelines that move millions of gallons of hazardous liquids and billions of cubic feet of natural gas daily. Within the United States, there are about 2,200[1] natural gas pipeline operators and 300 hazardous liquids pipeline operators. The Pipeline and Hazardous Materials Safety Administration (PHMSA) within DOT oversees the safety of the Nation's pipeline system, while the Transportation Security Administration (TSA) within DHS oversees security-related matters.

Over the past several years, we have issued numerous reports and testimonies on pipeline safety and security challenges facing the Department and industry. We have seen considerable progress by PHMSA in closing out congressional mandates, including mandates from the Pipeline Inspection, Protection, Enforcement, and Safety (PIPES) Act of 2006.[2] This is the direct result of attention from Congress, including this Subcommittee, and from the highest levels of DOT management.

In September 2004, DOT and DHS entered into a Memorandum of Understanding (MOU) to facilitate the development and deployment of transportation security measures. In our March 2006 testimony before the House Subcommittee on Highways, Transit, and Pipelines,[3] we recognized that finalizing the MOU was the first critical step in what is a very dynamic process. We pointed out, however, that the roles and responsibilities between PHMSA and TSA still needed to be clarified through a security annex to the MOU that specifically related to pipelines. PHMSA and TSA signed a pipeline security annex in August 2006.

As this Subcommittee is aware, the PIPES Act directed us to assess PHMSA's and TSA's actions to implement the pipeline security annex. We issued our report last month[4] and recommended several actions that PHMSA, in collaboration with TSA, must take with a sense of urgency, as the current situation is far from an "end state" for enhancing the security of the Nation's pipeline system.

My testimony today will focus on these needed actions across the three following areas:

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[1] Of the 2,200 operators of natural gas pipelines, there are approximately 1,300 operators of natural gas distribution pipelines and 880 operators of natural gas transmission pipelines.

[2] Pub. L. No. 109-468 (2006).

[3] OIG Testimony Number CC-2006-023, "Pipeline Safety: Progress and Remaining Challenges," March 16, 2006. OIG reports and testimonies are available on our website: www.oig.dot.gov.

[4] OIG Report Number AV-2008-053 "Actions Needed To Enhance Pipeline Security," May 21, 2008.

- ***PHMSA's and TSA's progress toward implementing the security annex and the challenges that remain.*** The pipeline security annex required PHMSA and TSA to jointly develop an action plan by February 2007 to implement the annex provisions and program elements. Implementing the annex is important because it includes program elements such as identifying critical infrastructure and key resources and developing security regulations, guidelines, and directives.

  In December 2007, we were concerned about an overall lack of progress in several areas, and we later communicated these concerns to PHMSA and TSA. At the time, the agencies had neither finalized the action plan nor completed 9 of the 11 annex program elements because they had no deadlines to foster timely decisions and reviews.

  To their credit, both PHMSA and TSA began to address these issues early this year, and considerable progress has been made. The two agencies developed a new action plan and began addressing outstanding program elements and associated initiatives. This progress, however, began nearly a year after the deadline agreed to in the annex, and the action plan still does not contain all initiatives required by the annex. Going forward, both agencies must sustain the progress made to finalize and effectively execute the annex provisions and program elements.

- ***The need for clearer lines of authority to address security oversight and enforcement for operators of liquid natural gas (LNG) facilities.***[5] Although the annex was an important step, it still does not explicitly state which agency has primary oversight and enforcement authority for LNG operators. As a result, there is a lack of clearly defined roles at the working level. Both PHMSA and TSA review pipeline operators' compliance with their respective security guidance. TSA's guidance, however, is voluntary and will remain unenforceable unless a regulation is issued to require industry compliance. Conversely, PHMSA is able to enforce its LNG security regulations, which existed prior to the creation of TSA in 2001. This can cause pipeline operators to receive conflicting or duplicative guidance and create confusion as to which agency they should look to as the lead Federal security regulator. To resolve issues of overlapping authority, PHMSA and TSA should take steps to amend the annex.

- ***Ways to maximize PHMSA's and TSA's resources for assessing pipeline operators' security plans and guidance.*** Last year, Congress passed the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Commission Act), which requires DOT and DHS to develop a plan to review the 100 most critical operators' security plans and critical facilities by August 2008. The act also stipulates that if DHS determines that regulations are

[5] LNG is natural gas cooled to an extremely low temperature, which causes it to liquefy. There are 113 LNG facilities in the United States.

appropriate, it is required to consult with DOT. One of the two agencies shall then promulgate the regulations and perform necessary inspection and enforcement functions.

We see areas where PHMSA and TSA can maximize their resources to effectively measure operators' compliance with existing guidance or assess the adequacy of the guidance. Specifically, (1) PHMSA should participate in these inspections on a regular basis to ensure effective and timely execution of this congressional mandate—especially given its level of expertise in security-related matters—and (2) PHMSA and TSA should develop testing protocols and perform vulnerability tests to ascertain whether unauthorized individuals can penetrate operators' critical infrastructure (including cyber attacks).

Before I discuss these key points in further detail, I would like to briefly touch on a few of the challenges the agencies face in securing the Nation's pipeline system.

Safeguarding the Nation's massive pipeline infrastructure from catastrophic events (i.e., terrorism or natural disasters) is a continuing challenge for DOT and DHS. In 2005, Hurricane Katrina devastated the Gulf Coast region and demonstrated the vulnerabilities of the Nation's critical infrastructure. Loss of electrical power to pumping stations forced three major pipeline operators to shut down. This eliminated most fuel sources to the entire eastern seaboard and caused a vast array of economic disruptions, including hoarding and severe price spikes.

It should be noted that the most frequently targeted mode of transportation by terrorists worldwide is pipeline systems. In Colombia, for example, rebels have bombed the Caño Limón oil pipeline over 600 times since 1995. Terrorist plots against pipelines have also occurred within the United States.

- In June 2007, the U.S. Department of Justice arrested members of a terrorist group planning to attack jet fuel pipelines and storage tanks at the John F. Kennedy International Airport in New York.
- In November 2007, a U.S. citizen was sentenced to 30 years in Federal prison for plotting to help an alleged al-Qaeda operative blow up U.S. oil pipelines and refineries.

In addition, pipeline incidents can have deadly implications, such as the August 19, 2000, natural gas transmission pipeline (30-inch-diameter) that ruptured adjacent to the Pecos River near Carlsbad, New Mexico. The released gas ignited and burned for 55 minutes. Twelve people who were camping under a concrete-decked steel bridge that supported the pipeline across the river were killed, and their three vehicles were destroyed. Two nearby steel suspension bridges for gas pipelines crossing the river were also extensively damaged.

These events underscore the need for a well-defined, well-coordinated, interagency approach to prevent, detect, and respond to both safety and security events. In today's constrained fiscal environment, DOT and DHS must leverage their resources to secure the Nation's pipelines. TSA's pipeline security program—with just 11 personnel—has the biggest challenge to effectively oversee security for the vast network of natural gas and hazardous liquids pipeline operators. Although PHMSA has regional offices and about 80 inspectors nationwide, it partners with state agencies—which have over 400 inspectors—to oversee and enforce compliance with pipeline safety requirements, primarily at operators of natural gas distribution pipeline systems. It is therefore incumbent upon PHMSA, TSA, and their state partners to work together effectively to enhance the security of the Nation's pipeline infrastructure.

It is against this backdrop that I will discuss my three points on pipeline security in greater detail.

PHMSA AND TSA HAVE MADE PROGRESS TOWARD IMPLEMENTING THE SECURITY ANNEX, BUT CHALLENGES REMAIN

PHMSA and 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. After PHMSA and TSA signed the annex, they designated a joint working group to develop a multi-year action plan for implementing the provisions and program elements of the annex. The working group was to complete its efforts on developing the action plan by February 2007.

In December 2007, we were concerned about an overall lack of progress in several areas, and we later communicated these concerns to PHMSA and TSA. At the time, the agencies had neither finalized the action plan nor completed 9 of the 11 annex program elements because they had no deadlines to foster timely reviews. These elements include identifying critical infrastructure and key resources; performing risk assessments; strategic planning; developing regulations, guidelines, and directives; and conducting inspection and enforcement actions (see exhibit).

Further, the December 2007 draft action plan did not contain several initiatives called for in the annex, which were specifically designed to enhance coordination efforts. These include initiatives for (1) PHMSA to provide TSA with data collected during PHMSA's security inspections or reviews of security plans and (2) TSA to coordinate with PHMSA on observations or recommended measures—derived from the results of criticality and vulnerability assessments of facilities—to evaluate whether those measures conflict with or adversely affect current or planned safety requirements. This coordination is essential to prevent security recommendations that could unintentionally contradict safety regulations and put the safety of the Nation's pipelines at risk.

Also, under the annex, PHMSA and TSA agreed to develop a plan with specific timeframes for implementing the program elements. The December 2007 plan, however, did not contain timeframes to: (1) develop a procedure for requesting special permits to install pipeline facilities in the event of a security incident, (2) provide training to TSA staff on technical issues related to PHMSA's mission, or (3) perform a study on the petroleum pipeline network supply. Without interim deadlines and accountability, there is no guarantee the action plan will be finalized and properly executed.

To their credit, both PHMSA and TSA began to address these concerns in January and February of this year, and considerable progress has been made. The two agencies developed a new action plan and began addressing outstanding program elements and associated initiatives. The majority of initiatives are now planned for completion by the end of 2009. We note that this progress, however, began nearly a year after the deadline agreed to in the annex. In addition, we are concerned that the new action plan still does not contain initiatives for (1) the agencies to develop protocols for ongoing information sharing and participation in their respective research and development planning and (2) TSA to coordinate with PHMSA on observations or recommended measures from vulnerability assessments.

Going forward, both agencies must sustain the progress made to finalize and effectively execute the annex provisions and corresponding program elements and ensure they coordinate efforts.

CLEARER LINES OF AUTHORITY ARE NEEDED TO ADDRESS SECURITY OVERSIGHT AND ENFORCEMENT FOR LNG FACILITY OPERATORS

A central goal of the annex was to delineate clear lines of authority and prevent duplication of effort. Yet, the annex does not explicitly state which agency will be responsible for the enforcement and oversight of LNG facilities. Since both PHMSA and TSA can conduct reviews of LNG facilities, a clear line of authority does not exist. This creates the potential for duplicative efforts and confusion among LNG operators as to which agency they should look to for guidance as the lead Federal security regulator.

By law, TSA holds the lead authority and primary responsibility for security activities in pipelines. Conversely, PHMSA has—and enforces—its own security regulations specific to LNG facility operators[6] that existed prior to the creation of TSA in 2001. Under PHMSA regulations, LNG facilities must have, among other things, a (1) security manual, (2) security training program for employees, (3) security communications system, and (4) security lighting and monitoring system. PHMSA inspects LNG facilities to ensure they meet these requirements. The LNG facilities regulations are the only PHMSA pipeline regulations that specifically delineate

[6] Liquefied Natural Gas Facilities: Federal Safety Standards, 49 C.F.R. § 193 (2007).

operators' security responsibilities in detail. For hazardous liquid and gas pipelines, PHMSA has other pipeline safety regulations that require pipeline operators to prevent vandalism and unauthorized use of equipment.

While PHMSA continues to oversee the security of LNG facilities, TSA has stated that it can issue security directives, but it has not done so. These directives would allow TSA to take enforcement actions against pipeline operators. TSA currently conducts reviews of pipeline operators' compliance with voluntary guidance, but it neither has regulations related to pipeline security nor takes enforcement actions against pipeline operators.

To further complicate the matter, the United States Coast Guard—a DHS agency responsible for marine and port security—also has authority to oversee and enforce its security regulations for operators of LNG facilities.[7] Several of the operators' LNG facilities are located in the Nation's ports or along its eastern seaboard. PHMSA, the Coast Guard, and the Federal Energy Regulatory Commission[8] executed an interagency agreement for safety and security reviews of LNG facilities in 2004 to "avoid duplication of effort, and to maximize the exchange of relevant information related to the safety and security aspects of LNG facilities and the related marine concerns."

In our view, a similar approach should be taken with the pipeline security annex to resolve the issue of overlapping authority between PHMSA and TSA. The annex should be amended to specifically delineate the agencies' roles and responsibilities in overseeing and enforcing security regulations for LNG operators.

PHMSA AND TSA NEED TO MAXIMIZE THEIR RESOURCES FOR ASSESSING PIPELINE OPERATORS' SECURITY PLANS AND GUIDANCE

Congress continues to emphasize the importance of securing the Nation's pipelines and related infrastructure. In August 2007, Congress passed the 9/11 Commission Act.[9] The act mandates the following actions related to pipeline security for the Secretary of Homeland Security and the Secretary of Transportation:

- DHS, in consultation with DOT, is required to establish a program for reviewing pipeline operators' adoption of recommendations in a 2002 PHMSA security guidance document. The PHMSA guidance recommended that, among other things, pipeline operators: (1) identify critical facilities, (2) develop and implement a corporate security plan, and (3) review the corporate security plan on an annual basis and revise as necessary to reflect changing conditions. The program must also include a plan to review pipeline security plans and critical

[7] Maritime Security: Facilities, 33 C.F.R. § 105 (2007).

[8] The Federal Energy Regulatory Commission is responsible for authorizing the construction of onshore LNG facilities and also conducts environmental, safety and security reviews of LNG plants and related pipeline facilities.

[9] Pub. L. No. 110-53 (2007).

facility inspections by May 2008. TSA is currently reviewing the 100 most critical operators and determining how operators are complying with PHMSA's 2002 security guidance.

- DHS and DOT are required to develop and implement a plan for reviewing and inspecting the 100 most critical pipeline operators' pipeline security plans and critical facilities.[10] The agencies are required to develop and implement a plan by August 3, 2008. According to TSA, it is currently reviewing the 100 most critical operators but must still develop a list of those operators' most critical facilities so that facility reviews can be planned.

- DHS and DOT shall develop and transmit to pipeline operators security recommendations for natural gas and hazardous liquid pipelines and pipeline facilities by February 2009.

- If DHS determines that regulations are appropriate, it is required to consult with DOT. One of the two agencies shall then promulgate the regulations and perform necessary inspection and enforcement functions.

To determine whether additional security regulations are needed, PHMSA and TSA will need to evaluate and test the adequacy of existing security standards—as agreed to under the annex. The need for new security regulations will be partly determined by the degree to which pipeline operators are following existing guidance.

The current security guidance under TSA, however, is not mandatory and will remain unenforceable unless a regulation is issued to require industry compliance. Also, the security guidance for operators of natural gas and hazardous liquids pipelines is *not* comprised of a set of prescriptive standards that define how a requirement is to be achieved. Instead, the guidance is general in nature and is intended to provide an overview of security issues in industry and broad guidance on effective policies and practices.

To effectively assess whether existing security guidance is adequate, PHMSA and TSA need to take the following actions:

- Ensure PHMSA is actively engaged in inspecting the 100 most critical operators' security plans and developing a list of critical facilities for review. To date, PHMSA's role has been limited to an "as needed" basis. According to PHMSA, it had not regularly attended past TSA security reviews of pipeline operators. In our opinion, to ensure effective and timely execution of this mandate, PHMSA should participate in these inspections on a regular basis, especially given its level of expertise in security-related matters.

[10] PHMSA security guidance defines a facility's critical categorization by three factors: (1) whether it is a viable terrorist target, (2) how important it is to the Nation's energy infrastructure, and (3) how likely it is to be used as a weapon to harm people.

- Develop testing protocols and perform vulnerability tests to ascertain, among other things, if unauthorized individuals can penetrate operators' critical infrastructure, including cyber attacks against critical infrastructure. Currently, there are no plans to develop protocols and conduct vulnerability tests. Without testing, there is no way to effectively measure operators' compliance with existing guidance or assess the adequacy of the guidance.

PHMSA and TSA are making good progress in their efforts to communicate and coordinate on pipeline security matters, and they must continue to work together to develop a pipeline security strategy that maximizes the value and efficiency of both agencies' efforts. This is a fundamental factor in enhancing pipeline security.

That concludes my statement. I would be glad to answer any questions that you or other Members of the Subcommittee might have.

EXHIBIT. PROGRAM ELEMENTS IN THE PIPELINE SECURITY ANNEX

Program Element	Description
1. Identification of Critical Infrastructure/Key Resources and Risk Assessments	The agencies agreed to review existing definitions of criticality and consider the need to refine definitions. To support TSA efforts in this area, PHMSA agreed to provide compliance data, other information collected in the course of security inspections or reviews of security plans (including those required under 49 CFR § 172.800), and activities of transportation carriers and shippers. Also, TSA will coordinate with PHMSA on observations or recommended measures derived from the results of criticality and vulnerability assessments, including on pipelines, to evaluate whether they conflict with or adversely affect current or planned safety requirements.
2. Strategic Planning	The agencies will seek consensus concerning measures to reduce risk and minimize consequences of emergencies involving pipeline infrastructure. Also, the agencies will identify initiatives and activities for achieving performance goals and will develop a program framework and timetable for their completion.
3. Standards, Regulations, Guidelines, and Directives	The agencies will seek early and frequent coordination in the development standards, regulations, guidelines, or directives affecting transportation security; identify best practices; and explore opportunities to build on existing standards-setting activities. In the course of discharging their safety and security missions, the agencies will review the adequacy of existing standards in the private and public sector, identifying any gaps that should be addressed through rulemaking, guidelines, or directives.
4. Inspections and Enforcement	The agencies will explore opportunities for collaboration in inspection and enforcement activities, with the objective of maximizing the use of available resources and targeting enforcement resources on the basis of system risks. The agencies will immediately develop procedures for referral of safety and security issues to PHMSA and TSA, respectively; inventory existing inspection and enforcement resources; and develop specific plans for closer coordination in the deployment and use of inspectors, including any necessary additional training.
5. PHMSA Technical Support	TSA can ask for PHMSA's support to develop, staff, implement, or enforce regulations, orders, directives, plans, programs, or other measures. TSA can also ask for PHMSA support to conduct security reviews during an elevated security threat.
6. Sharing Information During Emergency Response	The agencies agreed to promptly share information about emergency situations that implicate the missions and interests of each other.

7. Public Communication, Education, and Outreach	The agencies will review existing protocols for public communication concerning security-related matters, specifically including review of existing protocols for publication of information contained in the national pipeline mapping system (a map of the Nation's pipelines developed by PHMSA).
8. Communicating Protective Measures to Affected Organizations	The agencies agreed to consult with one another before disseminating security requirements, voluntary standards, and guidelines that impact security to the public.
9. Research and Development	The agencies will review their safety- and security-related projects and identify opportunities to collaborate and support their strategic plan through identification, development, and testing of new or modified technologies or processes. Also, the agencies will establish protocols for ongoing information sharing and participation in their respective research and development planning processes.
10. Legislative Matters	The agencies are to consult with each other as soon as possible on the development of proposed legislation, comments on legislative proposals, draft testimony or briefings to be given before congressional bodies or staff, and answers to questions for the record.
11. Budget	The agencies agreed to communicate throughout the budget development, justification, and execution process in order to develop and present a coordinated position on transportation security funding matters and to avoid duplicative requests for funding in connection with pipeline and hazardous material transportation security.

Exhibit. Program Elements in the Pipeline Security Annex

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