TESTIMONY OF

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

REGARDING
REAUTHORIZATION OF THE PIPELINE SAFETY ACT

JUNE 19, 2019

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

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

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

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

SUMMARY OF TESTIMONY

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

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

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 However, many PHMSA regulations are outdated, and this can create a barrier that prevents pipeline operators from implementing 21st-century technologies and practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

DETAILED TESTIMONY

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

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

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

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

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

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

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

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

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

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

[4] 49 C.F.R. § 192.7(c)(6)(2018).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[8] *See* 49 U.S.C. § 60102.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[18] GPAC Meeting Final Voting Slides at 16 (Jan. 11-12, 2017), https://primis.phmsa.dot.gov/meetings/FilGet.mtg?fil=865.

[19] *See* Subcommittee Discussion Draft for the Safer Pipelines Act of 2019, § 6 (proposed 49 U.S.C. § 60116(b), (d), (f)).

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

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

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

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

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

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

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

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

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

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

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

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

[23] *See* PHMSA Legislative Proposal for the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2019, § 5, https://www.phmsa.dot.gov/news/protecting-our-infrastructure-pipelines-and-enhancing-safety-act-2019-section-section-analysis.
[24] PHMSA Voluntary Information-Sharing System Working Group, VIS Recommendation Report at 6-7 (June 10, 2019), https://www.phmsa.dot.gov/standards-rulemaking/pipeline/vis-recommendation-report.
[25] *See* Subcommittee Discussion Draft for the Safer Pipelines Act of 2019, § 4(a).
[26] *See* 49 U.S.C. §§ 60102(b)(2)(D), § 60102(b)(3).

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

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

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

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

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

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

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

[29] 49 U.S.C. § 60121(a)(1).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Miscellaneous Topics

INGAA supports PHMSA funding levels consistent with recent years.

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

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

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