



NARUC

National Association of Regulatory Utility Commissioners

September 18, 2023

Honorable Sam Graves
Chairman
Committee on Transportation and
Infrastructure
U.S. House of Representatives
Washington D.C. 20515

Honorable Rick Larsen
Ranking Member
Committee on Transportation and
Infrastructure
U.S. House of Representatives
Washington D.C. 20515

Honorable Troy Nehls
Chairman
Subcommittee on Railroads, Pipelines, and
Infrastructure
U.S. House of Representatives
Washington D.C. 20515

Donald M. Payne Jr.
Ranking Member
Subcommittee on Railroads, Pipelines, and
Infrastructure
U.S. House of Representatives
Washington D.C. 20515

RE: Pipeline Safety/PHMSA Reauthorization legislation

Dear Chairman Graves, Chairman Nehls, Ranking Member Larsen, and Ranking Member Payne:

On behalf of the National Association of Regulatory Utility Commissioners (NARUC), I am writing to you today regarding legislation to reauthorize the Pipeline and Hazardous Material Safety Administration (PHMSA) and its pipeline safety programs. NARUC members are the public utility commissioners in all 50 States and U.S. territories. Currently, state utility commissions and state pipeline inspectors have direct safety authority and oversight of: more than 2 million miles of gas distribution main and service pipelines (which is over 99% of the U.S. total); more than 105,000 miles of gas transmission pipelines (better than 35% of the U.S. total); and over 11 thousand miles of jurisdictional gas gathering pipelines (over 67% of the U.S. total), through cooperative agreements with, and certification by PHMSA.

This federal/state partnership is vital to keeping the nation's pipeline system safe and operational. In fact, this partnership is unique among all federal/state partnerships in that: the federal government certifies the state programs; the federal government cedes authority to the state programs so the states may inspect pipeline systems, enforce federal and state laws/regulations, and levy fines; and, the federal government reimburses the state programs a portion of the costs incurred by the states by providing grants to the states that are **not** funded by taxpayers and



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therefore do **not** increase the US debt. As the federal government's primary partner in enforcing pipeline safety laws and regulations, we have two priorities/issues that we request Congress affirmatively addresses in the legislative process to reauthorize PHMSA and the nation's pipeline safety programs.

Our first priority is the authorization of appropriation amount included in legislation. Under current law, PHMSA may reimburse states up to 80% of what the states spend on their respective programs. Unfortunately, Congress and the federal government have not provided reimbursement funding to the states that come near to reaching the 80% threshold. According to PHMSA's numbers, in FY 2020 the states received 69.6% reimbursement, in FY 2021 62.9%, in FY 2022 (the most recent actual number) 63.36%, and the last estimate, of which we are aware, suggests that the states will be reimbursed at approximately 55% in FY 2023. While at the same time, Congress continues to place increased mandates upon the state pipeline safety programs at shrinking reimbursement levels. These reimbursement levels, coupled with increasing mandates, make it nearly impossible for the states to maintain their respective programs and have resources in place to successfully meet and accomplish any future changes or challenges in our mission. The House Committee on Transportation and Infrastructure can help reduce the level of unfunded federal mandates within the federal/state pipeline safety partnership by authorizing an appropriation amount that meets the 80% reimbursement limit currently found in law. The estimates of what the states will collectively spend on their respective pipeline safety programs in order to continue to meet current federal mandates and remain certified by PHMSA are:

FY 2024: \$132 million (80% = \$105.6 million)

FY 2025: \$142 million (80% = \$113.6 million)

FY 2026: \$152 million (80% = \$121.6 million)

Therefore, we respectfully request that any reauthorization legislation include an authorization of appropriation equal to 80% of the total estimated state expenditures, found above, for FY 2024-2026.

Our second priority for reauthorization legislation is to provide an exemption from ex parte communication to state pipeline safety representatives and the National Association of Pipeline Safety Representatives (NAPSR) for the purpose of providing technical input to PHMSA staff throughout the rulemaking process. Currently, state pipeline safety personnel are considered "the public" for the purpose of communicating with PHMSA during a rulemaking and are therefore limited as to what and when they may communicate with regard to rulemaking procedures/process. We believe that a compelling argument exists for such an exemption provision in reauthorization when one considers: that every state program participating must be audited, evaluated, and certified by PHMSA; that PHMSA reimburses the states for doing



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inspections, enforcement, and investigations on PHMSA’s behalf; that a national pipeline safety program cannot function without a state participation component; and, that the state safety inspectors bring “hands on” operational level perspectives specific to distribution systems as well as experience-based knowledge as to what is needed and how best to meet and exceed safety requirements contemplated by Congress.

In short, without the state staff and their knowledge and qualifications, PHMSA would currently not have the ability to inspect the nation’s vast pipeline network and enforce the laws that regulate pipelines. Therefore, it would be a net positive to the mission of pipeline safety to include state pipeline safety personnel in PHMSA policy/rulemaking beyond the classification of “public” participants. State pipeline safety personnel and NAPSRS ought to be able to provide unhindered comment and input to PHMSA staff in every stage of the rulemaking process, from conception to implementation. This collaboration would increase the safety of the system and provide for better, more efficient rules and regulations. The relationship between state pipeline safety inspectors/NAPSRS and PHMSA goes beyond the level of “stakeholder” or “the public” when considering safety policy and procedure. As we mentioned above, this partnership is unique in state/federal collaboration and ought to be recognized as such.

Chairman Graves and Chairman Nehls, in a letter they co-signed with Senators Cruz and Young dated August 25, 2023, to PHMSA Deputy Administrator Brown regarding PHMSA’s proposed rule addressing gas pipeline leak detection, also expressed frustration that pre-rulemaking meetings held by PHMSA to draft the regulation omitted state pipeline safety inspectors. The omission mentioned in the letter signed by Chairmen Graves and Nehls is exactly why we believe this issue must be addressed by Congress.

In conclusion, we are pleased that the House Committee on Transportation and Infrastructure has begun the process of PHMSA/pipeline safety reauthorization and that your respective staff has been in discussion with the stakeholders, including NARUC. We look forward to continuing these deliberations to produce legislation that strengthens the existing federal/state partnership by providing the states with the resources that are necessary to improve pipeline safety. Thank you for your time and consideration. We look forward to working with you and your staff as this process moves forward.

Sincerely,

Greg White
Executive Director

CC: All members of the House Committee on Transportation and Infrastructure