



NAPSR

National Association of Pipeline Safety Representatives

October 15, 2010

Mr. Jeffrey D. Wiese
Associate Administrator for Pipeline Safety
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue SE
Second Floor, East Building
Washington DC, 20590

RE: Request for Waiver of Prior Three Year Average State Expense Component of the Pipeline Safety Grant Program

Dear Mr. Wiese:

The PIPES Act of 2006, and subsequent appropriations, significantly improved funding opportunities for state pipeline safety grant programs and the federal/state partnership they serve. NAPSR deeply appreciates PHMSA's support for these measures.

In passing the PIPES Act, Congress adopted language apparently intended to update 49 USC §60107 with a provision to ensure that a minimum level of state funding is applied to the state pipeline safety program. NAPSR understands that this provision was adopted late in the deliberations and without opportunity for affected parties to consider its implications and provide their input. It is now becoming apparent that this provision could have unanticipated negative impacts on state pipeline safety programs and the federal/state partnership. It has even been suggested that if a state does not maintain this level of spending, it could lose eligibility for any grant funds.

49 USC §60107 essentially requires that state spending on its natural gas and hazardous liquid safety programs must at least equal the average amount spent in the previous three years. However, the Secretary of Transportation is authorized to waive this requirement. NAPSR believes it would be inequitable and unfair to apply this limit to state programs for reasons that include the following:

Normal Variations in State Spending

A variety of factors can affect the amount actually spent by the state on its pipeline safety programs. For example, several staff turnovers throughout the year could significantly impact the amount spent, and expenditures would almost certainly be less than in three prior years with less or no turnover. Staff turnover and other variation in expenses are a normal part of any operation, yet the three year average provision would unfairly penalize states where this has occurred.

Economic Hardship

It is well known that states are almost universally experiencing very difficult economic times, with reduced receipts and budget shortfalls leading to across-the-board budget cuts, hiring and travel restrictions, deferred equipment purchases, and other often draconian measures to control state expenditures. For example, in 17 states, pipeline safety program employees have been furloughed without pay for as many as 21 days. In this environment it is inevitable that many states will incur reduced expenditures for pipeline safety. This is not a reflection of a state's commitment to pipeline safety, but the reality of the current economic and budget crisis. It is also important to note that the availability of grant funds can be an important factor in protecting state programs from further cutbacks, and even from calls to discontinue the program entirely. Penalizing states in such circumstances undermines state programs at a time when federal support for their mission is more important than ever.

Past Program Expansion

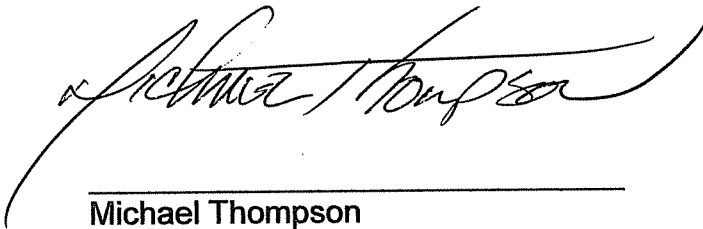
NAPSR understands that the intent of the three-year provision in the law is to promote growth in the state pipeline safety programs through added efforts by the responsible state agency, as opposed to awarding a larger federal grant for the same or less effort. However, NAPSR submits that many states have already grown their programs in response to PHMSA initiatives. In recent years those initiatives have included Operator Qualification, Integrity Management, and Public Awareness, plus additional state activity in the areas of excavation damage prevention and assistance with PHMSA data collection. In the system used by PHMSA to evaluate state programs for grant purposes, until very recently none of these increased efforts were recognized. Instead, grant funding trailed the growth in state expenditures until 2009. Instead of the 50/50 percent federal/state funding partnership envisioned by federal law, the actual rate was approximately 40/60 percent in 2008, with states paying the disproportionate share. States should not be penalized for failing to grow their programs when in fact their efforts and support for PHMSA initiatives have already grown significantly over time.

NAPSR anticipates that potentially every state pipeline safety program within NAPSR could request a waiver of the three year provision based on some or all of the above considerations. Such effort would of course entail considerable effort by the states to prepare waiver request submissions, and by PHMSA to review and process those submissions. NAPSR recommends a simpler process. Based on discussions during its 2009 annual meeting, NAPSR proposes that PHMSA grant a waiver to all of the states from the 3 year provision in the PIPES Act for a period of three years to allow the newly appropriated funding to reach the states and stabilize the percentages of state/federal funding.

Please consider this letter as a request that such a waiver be granted.

We appreciate the opportunity to work with you in furthering our mutual interests in the cause of pipeline safety. If you have questions, please contact the undersigned.

Sincerely;

A handwritten signature in black ink, appearing to read "Michael Thompson", written in a cursive style. The signature is positioned above a horizontal line that separates it from the typed name and contact information below.

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cc: NAPSR Membership