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Shake-Ups Planned for Pipeline Safety Regulation

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The federal agency responsible for regulating the safety of natural gas and hazardous liquids pipelines has been in the spotlight recently as both chambers of Congress focused on reauthorizing the Department of Transportation's ("DOT") Pipeline and Hazardous Materials Safety Administration ("PHMSA"). Significant changes to PHMSA's pipeline safety regulations are on the horizon and with Congressional urging, PHMSA appears poised to become a more assertive, engaged agency. Those companies regulated by PHMSA should closely review and evaluate the changes and prepare for additional regulations that will affect the economics and operations of pipeline assets.

On February 25, the House Transportation and Infrastructure ("T&I") Subcommittee on Railroads, Pipelines, and Hazardous Materials held a hearing, "Reauthorization of DOT's Pipeline Safety Program," and the House Energy and Commerce Subcommittee on Energy and Power held a hearing on March 1, "Legislative Hearing to Examine Pipeline Safety Reauthorization." Meanwhile, the Senate is set to pass a bill that would reauthorize PHMSA, so long as it resolves holds that have been placed on the bill by two Republican Senators.

As described below, PHMSA revealed a number of new rulemakings and initiatives, including a renewed effort to focus on expedited rulemaking, which are expected to be implemented in the near future. Interested parties should be prepared for changes to the agency's regulations, such as expanded PHMSA oversight of underground natural gas storage facilities and gathering pipelines. K&L Gates' policy and regulatory teams are paying close attention to this congressional action and to several of PHMSA's recent announcements and are prepared to assist our clients.

Pipeline Safety Reauthorization Bills

The Securing America's Future Energy: Protecting our Infrastructure of Pipelines and Enhancing Safety ("SAFE PIPES") Act (S. 2276) would reauthorize PHMSA through fiscal year ("FY") 2019 to oversee the safety of pipelines that transport natural gas or hazardous liquids. On February 26, the House Committee on Energy and Commerce released a discussion draft of the Pipeline Safety Act of 2016, a PHMSA bill that would also reauthorize the pipeline safety program through 2019.

The SAFE PIPES Act and House discussion draft emphasize completion of the congressional pipeline safety mandates from the 2011 reauthorization still outstanding, as only 26 of 42 have been completed to date. Under both bills, PHMSA must prioritize completion of these mandates before addressing new rulemakings and the Secretary of Transportation is held accountable for providing updates to Congress regarding the status of these rulemakings. The SAFE PIPES Act would also require the review of PHMSA inspection processes and integrity management programs, which are integral features of PHMSA's pipeline safety program. In addition, it would authorize appropriations for PHMSA, including funds to provide grants for state oversight programs.

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The SAFE PIPES Act and the House discussion draft also focus on underground natural gas storage facilities, authorizing PHMSA to establish safety standards for certain facilities and to assess fees on entities that operate such facilities.

Another provision of the SAFE PIPES Act would require PHMSA to release to certain congressional committees “full and unredacted copies of oil spill response plans” upon request. At least one senator, Senator James Lankford (R-OK), has expressed security concerns about the provision and review of oil response plans that include proprietary information, noting particular concern regarding the potential for such documents to be leaked and used to aid terrorists. Unlike the Senate bill, the House discussion draft would not require PHMSA to provide oil response plans to Congress.

Pipeline Oversight: A Top Priority

At the House T&I hearing, Chairman Jeff Denham (R-CA) asserted that “diligent oversight of DOT’s pipeline safety programs is a top priority,” and that the pipeline reauthorization bill is the Chairman’s “top legislative priority for the coming year.” Along with other members, Chairman Denham focused on PHMSA’s projected timeline for completing the remaining mandates from the 2011 reauthorization bill and reiterated Congress’ expectation that all of these remaining mandates be completed.

House Committee on Energy and Commerce Chairman Fred Upton (R-MI) described the House discussion draft as “a starting point” to reauthorizing the pipeline safety program and noted that the Committee is working with the House T&I Committee to “move ahead.”

PHMSA Says Be Ready for New Regulations, Including Coverage of Gathering Lines, and New Personnel

At the T&I Committee hearing, PHMSA indicated that it is close to submitting a final rule to the DOT and the Office of Management and Budget for approval that concerns a suite of modifications to its regulation of onshore hazardous liquids pipelines. PHMSA began the rulemaking process for these regulations in 2010 and expressed hope that the final rule will be published in the coming months.

In addition, a notice of proposed rulemaking on the gas transmission rule is expected to be published in the “next couple of weeks,” according to PHMSA Administrator Marie Therese Dominguez. The Office of Management and Budget’s Office of Information and Regulatory Affairs approved the PHMSA’s notice of proposed rulemaking on gas transmission pipeline safety on February 29.

In a significant development for the upstream oil and gas industries, Administrator Dominguez asserted that the proposed rule also will address gathering lines during her testimony before the House Committee on Energy and Commerce hearing. She did not offer any additional detail on the proposed rule related to gathering lines, therefore the scope of any impact on companies with gathering line assets is as yet unknown.

In response to criticisms concerning PHMSA’s poor accident prevention record, the agency also announced that it is reorganizing its pipeline safety program by establishing a strategic framework to better prioritize agency work — PHMSA 2021 — and proposing two new offices. One office would focus on information collection, data analysis, and performance-

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based planning, with the goal of expediting its rulemaking. The second office would be a senior executive service position that would help drive consistency across PHMSA.

Following on the heels of the natural gas storage leak in Aliso Canyon in which PHMSA worked closely with the State of California “to provide technical assistance and support to state and local regulatory agencies,” Administrator Dominguez also noted that the federal government should play a larger role in underground gas storage, which currently is regulated primarily by the states.

Prepare for Changes

It appears that changes to PHMSA’s pipeline safety regulations are on the horizon, as well as potential expansions of PHMSA’s oversight of underground natural gas storage facilities and gathering pipelines. Interested parties should be prepared for changes to the agency’s regulations, which now may be promulgated on much quicker timelines than we have traditionally seen.

K&L Gates’ policy and regulatory professionals are prepared to advise, represent, and advocate on behalf of clients on natural gas, LNG, natural gas liquids (NGLs), and oil and oil-product related matters, including pipeline safety and transportation issues. Our team has counseled clients on a variety of issues related to interstate oil and natural gas pipelines and LNG infrastructure, including in proceedings before the Federal Energy Regulatory Commission (“FERC”) related to the construction of regulated facilities, issues pertaining to the rates and terms and conditions of service, and issues related to FERC policies; on natural gas trading operations; in negotiations for capacity on interstate oil and natural gas pipelines and related facilities, as well as asset management arrangements; on the U.S. federal, state, and local authorities’ roles in the development of energy infrastructure, including pipelines and LNG terminal siting; on PHMSA-related compliance matters for oil, NGLs, and natural gas pipelines; in congressional investigations into oil and natural gas related matters, including oil spills; and on Bureau of Safety and Environmental Enforcement and Bureau of Ocean Energy Management leasing issues associated with offshore energy facilities and natural gas pipeline.

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