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President Obama Signs Pipeline Safety Law: Significant Additional Mandates for PHMSA and Potential for More Rulemakings to Come

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On June 22 2016, the President signed into law the U.S. Pipeline and Hazardous Materials Safety Administration (“PHMSA”) reauthorization bill, the Securing America’s Future Energy: Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (S. 2276) (“PIPES Act of 2016” or the “Act”). Congress passed the three-year reauthorization of the Department of Transportation’s (“DOT”) PHMSA earlier this month, extending the agency’s authorization through FY2019. The seven-month process involved strong bipartisan support and cooperation to bolster PHMSA’s safety responsibilities, evidenced by the fact that the legislation passed by voice vote every step of the way.

The PIPES Act of 2016 contains a number of substantive provisions that expand or enhance PHMSA’s authority; calls for the promulgation of new regulations; directs the establishment of working groups, including a task force on the Aliso Canyon natural gas leak; and requires over a dozen reports and studies to Congress over the next two years that may signal areas in which Congress will mandate additional rulemakings in the future. In addition, the PIPES Act of 2016 ratchets up PHMSA’s accountability for rulemakings by directing the Secretary of Transportation (“Secretary”) to publish a detailed report on the status and timeline for each outstanding rulemaking at least 120 days after the enactment of the Act and then every 90 days until a final rule is published. The Act includes a broad definition of outstanding rulemakings that covers not only those required under the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, but also any final rules required by the PIPES Act of 2016 or any prior Acts.

In sum, the PIPES Act of 2016 signals the potential for significant regulatory activity at PHMSA in the coming years that could have substantial impacts on natural gas and hazardous liquids pipeline facilities owners and operators, shippers on those pipelines, and other stakeholders. As a result, it will be important for industry participants to monitor activity at PHMSA closely as the agency implements the Act, to be involved in providing information that will be included in studies and reports required under the Act to the extent possible, and to take an active role in rulemaking proceedings. Summarized below are two of the more salient items from the PIPES Act of 2016 and a number of the topics for which studies and reports are required.

Underground Natural Gas Storage Facilities

The PIPES Act of 2016 requires PHMSA to prioritize certain mandates, including the completion of new rules within two years of the date of enactment for underground natural gas storage facilities, which has previously been regulated by the states. The Act includes a broad definition of underground natural gas storage facilities. This increased federal

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oversight setting minimum safety standards for underground natural gas storage facilities reflects growing safety concerns arising from the natural gas leak at the Aliso Canyon storage facility last fall.

Similar to its existing state partnership program for gas and hazardous liquids pipelines, the PIPES Act of 2016 provides PHMSA the ability to authorize state participation in the regulation of underground natural gas storage facilities. Importantly, the Act provides states with the ability to enact regulations that are more stringent or impose additional requirements on underground natural gas storage facility operators, as long as those regulations are compatible with the federal regulations.

Because the states have primarily been responsible for regulating underground natural gas storage facilities, the way in which PHMSA will develop uniform federal rules remains unclear at this point. It will be important for the industry and stakeholder to participate in the development of these regulations, as well as in the discussions defining the contours of the user fees for underground natural gas storage facilities that are called for in the PIPES Act of 2016.

Emergency Order Authority

In addition to existing authorities, the PIPES Act of 2016 empowers the Secretary to issue emergency orders to the owners and operators of natural gas and hazardous liquid pipeline facilities without prior notice or the opportunity for a hearing. By contrast, PHMSA's existing authority to issue corrective action and safety orders provides that both may be issued only *after* notice and an opportunity for hearing.

The emergency order authority provided in the Act may be used in the event that the Secretary determines that an unsafe condition or practice presents an "imminent hazard," as defined in the Act.¹ Entities that are subject to or impacted by an emergency order will have the opportunity to file a petition for review. If such a petition is filed, the Secretary would have 30 days to demonstrate in writing that an imminent risk still exists or the order will lapse. Judicial review with expedited treatment is available, although the Act makes clear that a petition for judicial review on its own will not act as a stay of the Secretary's determination.

Industry participants will have an opportunity to participate in the development of regulations related to this new emergency order authority. The PIPES Act of 2016 directs PHMSA to issue temporary regulations within 60 days after enactment of the Act to implement the emergency order authority provided. PHMSA then must issue final regulations within 270 days of the date of enactment. It will be incumbent upon pipeline facilities owners and operators, shippers, and other stakeholders to take an active role in this rulemaking process and to closely monitor the way in which PHMSA uses its new authority.

¹ The PIPES Act of 2016 defines an imminent hazard as "the existence of a condition relating to a gas or hazardous liquid pipeline facility that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of such death, illness, injury, or endangerment."

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Studies and Reports

The PIPES Act of 2016 requires the completion of over a dozen studies and reports within the next two years. The majority of the required studies and reports to Congress must include a consideration of stakeholder perspectives, which presents a potential opportunity for the industry to help shape the discussions that appear likely to lead to future Congressional mandates for additional rulemakings. In addition, several provisions of the Act specifically call on PHMSA to issue regulations on point within a certain period of time. Along with reports on integrity management programs for natural gas and hazardous liquid pipeline facilities after publication of final rules in outstanding rulemakings, the Act includes requirements to complete studies and reports on the following topics:

- Improving existing damage prevention programs through technological improvements to prevent excavation damage (Section 8)
 - Deadline: Report on study within one year of enactment of the Act
 - Stakeholder Engagement: Consultation with stakeholders in development of the study required
 - Additional Rulemaking: None specifically required
- Development of voluntary information-system sharing (Section 10)
 - Deadline: Working group must be convened within 180 days of enactment of the Act
 - Stakeholder Engagement: Working group must including industry stakeholders
 - Additional Rulemaking: None specifically required
- Feasibility of establishing a national integrated pipeline safety regulatory inspection database aimed at improving communication and collaboration between PHMSA and state pipeline regulators (Section 11)
 - Deadline: Report within one year of enactment of the Act
 - Stakeholder Engagement: Inclusion of stakeholder recommendations on protecting proprietary and sensitive security information required
 - Additional Rulemaking: None specifically required
- Materials and corrosion prevention technologies for gas and hazardous liquid pipeline facilities (Section 21)
 - Deadline: Study within two years of enactment of the Act
 - Stakeholder Engagement: Study must include stakeholder and expert perspectives on effectiveness of corrosion control techniques to reduce pipeline failures
 - Additional Rulemaking: None specifically required
- Safety, regulatory requirements, techniques, and best practices applicable to petroleum gas pipeline facilities storing or transporting to 100 or fewer customers (Section 26)
 - Deadline: Results of study within two years of enactment of the Act
 - Stakeholder Engagement: Consultation with stakeholders required “as appropriate”

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- Additional Rulemaking: None specifically required
- Feasibility and affects of odorization of all combustible gas in pipeline transportation (Section 28)
 - Deadline: Report within two years of enactment of the Act
 - Stakeholder Engagement: None specifically required
 - Additional Rulemaking: None specifically required
- Metrics provided to federal and state agencies on lost and unaccounted for (“LAUF”) natural gas from distribution pipelines and systems (Section 29)
 - Deadline: Report within one year of enactment of the Act
 - Stakeholder Engagement: In rulemaking process
 - Additional Rulemaking: If report determines that alternate reporting structures or other recommendations would significantly improve report and measurement of LAUF and safety of natural gas distribution systems, PHMSA must issue regulations within one year of such determination
- State-by-state review of state policies regarding natural gas pipeline and distribution system leaks (Section 30)
 - Deadline: Report within one year of enactment of the Act
 - Stakeholder Engagement: In rulemaking process
 - Additional Rulemaking: If report determines that recommendations would significantly improve pipeline safety, PHMSA must issue regulations within one year of such determination

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