

Pipeline and Hazardous Materials Safety Administration Reauthorized

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The newly enacted legislation further bolsters PHMSA's growing oversight of storage and pipeline transport facilities.

On June 22, US President Barack Obama signed the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (PIPES Act) into law.^[1] As enacted, the PIPES Act reauthorizes the Pipeline and Hazardous Materials Safety Administration's (PHMSA's) administrative oversight of the transportation of hazardous materials, including the operation, maintenance, and spill response planning of US natural gas and hazardous liquid transportation pipelines. The PIPES Act reauthorizes PHMSA for four additional years (until 2019) and also seeks to enhance product transportation safety by improving communication and collaboration among PHMSA, pipeline regulators, and nonfederal stakeholders. The PIPES Act also expands PHMSA's authority to include underground storage of natural gas.

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Background

In September 2015, funding for PHMSA's authority under the Pipeline Safety Act expired, thereby necessitating congressional action that would reauthorize funding for PHMSA's operations. At the time, several mandates that Congress issued to PHMSA in the 2011 Pipeline Safety, Regulatory Certainty, and Job Creation Act had yet to be addressed, and events preceding expiration of PHMSA's funding authorization indicated that Congress might consider imposing new directives on PHMSA designed to ensure that it fulfilled its statutory role. Between June 9 and July 7, 2015, (i) the US House of Representatives passed legislation containing funds specifically reserved for PHMSA to use to address long overdue mandates, (ii) members of the House and US Senate requested oversight hearings into PHMSA's reauthorization and requested information from PHMSA officials concerning the status of overdue gas and hazardous liquid safety rules, and (iii) the House Subcommittee on Energy and Power held a pipeline safety hearing to discuss PHMSA's progress in implementing reforms required in the 2011 legislation.

In addition, several incidents involving the transport and storage of products received widespread attention and became subject to public debate while Congress was simultaneously considering new funding for PHMSA following the September 2015 expiration.

PIPES Act

The PIPES Act represents financial reauthorization for PHMSA to enable PHMSA to continue operating while also expanding its authority and requiring it to comply with several new directives. The PIPES Act contains several policy initiatives implemented through directives to PHMSA in addition to the congressional funding reauthorization.

First, the PIPES Act seeks to reduce or eliminate the need for congressional information requests or oversight hearings by requiring that PHMSA provide certain congressional committees with updates concerning rulemaking timelines, constraints affecting the rulemaking process, and any other details affecting the progress of the rulemaking process with respect to outstanding regulations.

Second, under the PIPES Act, PHMSA is required to comply with various directives that are either new or were unaddressed following the 2011 Pipeline Safety, Regulatory Certainty, and Job Creation Act. Key mandates include

the following:

- Section 60141 of the PIPES Act specifically directs PHMSA to issue minimum safety standards for underground natural gas storage facilities within two years of the PIPES Act's enactment date. The PIPES Act provides that an entity operating a facility subject to those standards may be assessed a user fee on an annual basis, to be deposited into an underground storage facility safety fund.
- PHMSA is required to create a research and development program for pipeline facility integrity that permits collaborative research and development projects between the PHMSA and nonfederal entities.
- PHMSA must convene a working group to consider the development of a voluntary no-fault information-sharing system to encourage collaborative efforts to improve inspection information feedback and information sharing regarding natural gas transmission and hazardous liquid pipeline integrity risk analysis.
- PHMSA must establish a database that will improve communication and collaboration between PHMSA and pipeline regulators.

Third, the PIPES Act mandates that PHMSA establish a task force composed of one representative from each of the US Department of Transportation, US Department of Health and Human Services, US Environmental Protection Agency, US Department of Interior, US Department of Commerce, and the Federal Energy Regulatory Commission. The task force must submit a report to various congressional committees that includes, among other information, an analysis of factors concerning natural gas storage leaks, mitigation measures to stop such leaks, and an assessment on a leak's effect on the environment, wholesale and electricity prices, and reliability of the bulk-power system.

With respect to funding, the PIPES Act substantially increases PHMSA's funding and authorizes the allocation of between \$124 million and \$134 million for fiscal years 2016 through 2019. In addition, the PIPES Act authorizes operational expenses that exceed \$20 million in each fiscal year between 2016 and 2019 and earmarks certain funding for stated purposes, such as making grants (approximately \$8 million per fiscal year) or carrying out a new mandate concerning underground natural gas storage facilities (approximately \$8 million, as discussed further below).

Implications

The PIPES Act is a clear effort by Congress to expand and strengthen PHMSA's oversight authority and put in place measures that enable PHMSA to provide timely information about the status of its efforts required by federal statute. The PIPES Act's provisions that require PHMSA to create minimum standards for underground natural gas storage are particularly instructive because they reflect congressional concern for the number and magnitude of transportation (and storage) incidents that have occurred in recent years.

In March 2016, PHMSA itself reacted to these incidents when it addressed a 2011 congressional directive by issuing a Notice of Proposed Rulemaking that proposed significant, far-reaching changes to natural gas pipeline safety regulations. Among the many reforms PHMSA proposed, it proposed to (i) regulate pipelines constructed prior to 1970, which PHMSA had previously exempted; (ii) impose additional requirements for regulated pipelines; (iii) implement several nonintegrity management-related changes, including adding requirements for monitoring gas quality, mitigating internal corrosion, and creating external corrosion management programs; and (iv) fundamentally alter its gas-gathering regulatory scheme so that previously unregulated pipelines (such as gathering lines) would potentially be subject to PHMSA regulation. But PHMSA's authority in these endeavors was limited—Congress has resolved much of that limitation with this new legislation.

Thus, going forward, we expect that PHMSA will continue to assert a more active role concerning pipeline and hazardous material transportation (and now storage, as well) oversight. In turn, PHMSA's regulations are now relevant to some industry participants that previously were not subject to PHMSA's authority.

[1] Protecting our Infrastructure of Pipelines Enhancing Safety Act of 2016, S.2276 (2016).

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