

ALERTS

Pipeline Law Alert - 2016 PIPES Act Delivers Increased Regulatory Scrutiny

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Enacted on June 22 in the wake of the major underground leak in Southern California Natural Gas Company's Aliso Canyon, the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (PIPES Act), reauthorizes the Pipeline and Hazardous Materials Safety Administration's (PHMSA) oil and gas pipeline programs through 2019. The act adds to a cadre of existing regulations intended to address the safe transmission of gas and hazardous liquids across the U.S. Pipeline owners and operators should consider taking note of three key aspects of the act that will impact the industry.

1. Aggressive timetable for more regulations and studies

The PIPES Act will be effective for three years before the next reauthorization period in fiscal year 2019. The act addresses unfinished mandates from the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (2011 act), which reauthorized federal pipeline safety programs through 2015.

More than a dozen of the 42 rulemakings and studies required by the 2011 act remain outstanding. To address this backlog, the PIPES Act requires PHMSA to publicly update the status of pending safety rules every 90 days.

Some of the outstanding rules and studies include:

- protocols for administrative enforcement hearings and expedited review in emergency cases
- expansion of integrity management programs beyond high-consequence areas
- regulation of pipeline leak detection systems
- use of shut-off valves and excess flow valves in certain applications

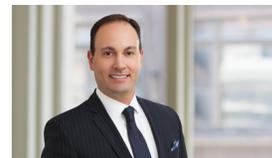
The 90-day update requirement could expedite the enactment of these overdue regulations from PHMSA, an outcome which has been lauded by numerous lawmakers. But recent personnel changes at PHMSA coupled with administration changes that will follow the 2016 presidential election may add more delay to the already backlogged rulemaking process.

Adding to this pressure on the agency, the PIPES Act creates an aggressive timetable for more than a dozen mandated studies and reports within the next 12 to 24 months. These include:

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- Government Accountability Office (GAO) report on the costs and benefits of various changes to the regulations applicable to gas transmission and gathering lines, and a separate GAO report on the integrity management plans for hazardous liquid pipelines
- Secretary of Transportation study regarding technology improvements to prevent excavation damage to pipelines and pipeline coatings and a separate report on the feasibility of a national pipeline safety regulatory inspection database
- Comptroller General report on materials, training and corrosion prevention technologies for gas and hazardous liquid pipelines, and a separate report on the feasibility, costs and benefits of odorizing all combustible gas in pipelines
- Transportation Research Board of the National Academies study on the safety and best practices for pipelines that transport or store only propane gas or mixtures of propane and air
- PHMSA reports of staffing and hiring needs, and a separate report on measures to resolve safety issues or reduce end user costs
- Enactment of an Aliso Canyon task force to report to Congress on the gas leak, its causes, and how to prevent or mitigate future leaks

2. Expansion of federal oversight

The PIPES Act grants the Secretary of Transportation the right to enter an emergency order to impose restrictions and emergency measures on pipeline operators without prior notice or a hearing process. To address due process concerns raised by industry participants, the act allows pipeline owners and operators to petition PHMSA for a review of the emergency order, which will trigger a 30-day period for PHMSA to release written findings to support the order. Thereafter, the party subject to the emergency order may seek expedited judicial review from a federal district court. Throughout the petition and review process, however, the emergency order will remain in place unless it expires by operation of law or by order from the court.

The act further authorizes the Secretary of Transportation to analyze the potential for leaks to occur at underground natural gas storage facilities, similar to the Aliso Canyon gas leak, and issue minimum safety standards. PHMSA is already working on underground natural gas storage regulations, and is planning to issue an interim final rule to require operators of underground storage facilities for natural gas to comply with minimum safety standards.

Please see our [prior pipeline alert](#) for discussion about some of PHMSA's proposed rule changes.

In addition, the act sets standards for operators to provide safety data sheets within hours of an incident, sets annual inline inspection requirements for inland pipelines located below 150 feet of water, and imposes requirements for liquefied natural gas pipeline facilities to conduct integrity assessments using "internal inspection technology" every 12 months on certain lines, or as needed based on risks associated with each of their pipelines.

3. Increased fees and costs on pipeline operators

The costs associated with increased inspection, monitoring, and repair requirements from the expanded regulatory oversight and the anticipated underground gas storage rules will be significant. These measures will include, for example: (1) complying with requirements for maximum allowable operating pressure verifications; (2) conducting specialized testing on aged pipes; (3) expanding pipeline integrity management programs; (4) installing additional leak detection or other equipment; and (5) overhauling best practices to comply with new pipeline safety rules enacted pursuant to the PIPES Act. For more details on the estimated economic impact for pipeline owners, operators and shippers, please see our [prior pipeline alert](#).

In addition to these costs, the PIPES Act authorizes PHMSA to impose user fees on underground natural gas storage facility operators.

Key measures in charting a way forward

As PHMSA continues its rulemaking process from the 2011 act and now the PIPES Act, pipeline owners and operators should remain actively engaged in the process. Depending on the specific rulemaking at issue, industry participants continue to have an opportunity to file comments on 2011 act mandates, and now the PIPES Act mandates. Informing PHMSA of the practical, technological and economic impacts on industry stakeholders will be critical to ensuring that new regulations are reasonable, effective and economically sustainable.

In addition, PHMSA has announced that it will host a workshop to address its priorities in light of the mandates from the PIPES Act. In particular, the workshop, scheduled for July 14 in Colorado, “will bring stakeholders, including federal and state agencies, industry, and interested members of the public together to participate in shaping a future of [pipeline] safety regulations for underground natural gas storage.” More information about the workshop is available on [PHMSA's website](#). Participating in such meetings should help pipeline owners and operators gain insight into PHMSA's strategy and timeline and allow further industry analysis and input.

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