

INSIGHTS

Pipeline Safety Act Reauthorization: Will a New Congress Mean New Mandates?

January 22, 2019

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The federal Pipeline Safety Act (PSA or the Act) mandates minimum safety standards for pipelines and certain associated storage and facilities (including LNG and other terminals). Congress should take up legislation to reauthorize the Act this year. Since the last reauthorization in 2016, there have been several noteworthy developments that have affected the industry, the relevant politics and the public. These include a new Administration, new leadership in relevant administrative agencies (e.g., DOT, PHMSA, FERC), policy changes, continued opposition to new pipeline construction, a high-profile distribution incident in Merrimack Valley, Massachusetts, and, most recently, Democratic control of the House of Representatives. It remains to be seen whether Congress will impose new substantive amendments to the PSA, but it is likely that some significant changes will be proposed. While the reauthorization proposals could vary, we expect to see discussion related to distribution pipelines (aging infrastructure, replacement projects, overpressure protection); construction issues; valves, emergency response and pressure protection; outstanding rulemakings; and updates to PHMSA procedural rules. Other issues that could be part of the discussion include cybersecurity, state oversight of pipeline safety, and older proposals from prior reauthorizations.

Status of Outstanding Mandates

The 116th Congress, which convened in January, will be responsible for reauthorizing the PSA and PHMSA, the agency responsible for oversight of pipeline safety. The current reauthorization expires on September 30, 2019. Historically, pipeline safety has largely been a bipartisan issue. The most recent substantive changes to the PSA occurred in the 2012 reauthorization in response to the San Bruno, California and Marshall, Michigan incidents. Following that, PHMSA initiated the process for several expansive rulemakings, some of which still remain incomplete. In the 2016 reauthorization, Congress mandated updates for the Agency's outstanding rulemakings and made other changes to require minimum federal standards for underground natural gas storage (in response to the Aliso Canyon incident). Sixty-one (61) legislative mandates were issued in the 2012 and 2016 reauthorizations, including rulemaking changes, studies, or other regulatory reviews. As of this summer, PHMSA had implemented only forty-seven (47) of these to date. Of the roughly fourteen (14) mandates that remain to be addressed, the issues include rules intended to address records and inspections issues highlighted by both the San Bruno and Marshall, Michigan incidents.

Political Backdrop

There are three committees that oversee PSA reauthorization and will be influential in drafting and finalizing reauthorization. These include: (1) [House Transportation and Infrastructure](#) (T&I) Committee; (2) [House Energy and Commerce](#) Committee; and (3) [Senate Committee on Commerce, Science and Transportation](#). Of these three committees, thirteen (13) members have either retired or lost their primaries, thus the industry will be dealing with many new lawmakers and their unique perspectives. While the exact composition of the House committees is not yet known, Representative [DeFazio](#) (D-OR) has been elected as chairman of the T&I Committee and Senators Ed [Markey](#) (D-MA) and Jon [Tester](#) (D-MT) are members of the Senate Commerce, Science and Transportation Committee; all three have in the past been critical of PHMSA and existing pipeline safety protections. Meanwhile, Senator [Manchin](#) (D-WV), who has been sympathetic to pipeline infrastructure and industry issues in the past, is the ranking member of the Senate Energy and Natural Resources Committee, which has some oversight of pipelines and pipeline issues. In addition, Senators [Warren](#) (D-MA) and [Booker](#) (D-NJ), both of whom are expected to be candidates for President in 2020, have been active of late in demanding increased government control of pipeline safety issues.

In recent years, Congress has been critical of PHMSA in oversight hearings due to its delayed response to statutory mandates from prior reauthorizations, and delayed response to NTSB, GAO and DOT OIG recommendations. This year's reauthorization will be no different, as evidenced by a June, 2018 hearing convened by the House T&I Committee, where representatives from both parties expressed sharp concern over PHMSA's delay in addressing past legislative mandates. The House will certainly also raise the other as yet unaddressed mandates and recommendations from the NTSB and GAO. More recently, there was a November 2018 [field hearing](#) on the Merrimack Valley incident, that signaled open season on PSA reauthorization.

Potential Reauthorization Issues

Industry trade groups have already been preparing for and working on proposals associated with the PSA reauthorization, which are not likely to contain significant changes, but more minor proposed changes such as amendments to PHMSA procedural rules. PHMSA has likely prepared or is in the process of preparing its own list of issues. In light of the above, some issues that we anticipate could be raised during the PSA reauthorization process include the following:

1. Distribution Pipelines

If not more generally, we expect Congress to discuss the following issues specific to gas distribution pipelines:

Aging Infrastructure/Pipe Replacement

Aging infrastructure is an issue that has been raised for some time, but the recent Merrimack Valley incident, where the pipeline distribution operator was in the process of upgrading and retiring older infrastructure, has brought it back into focus particularly for distribution pipelines. Relevant proposals, which could apply more broadly, may relate to pipe replacement (which is currently voluntary for cast iron pipe although many states provide incentives), requirements specific to pipeline modernization projects and work packages, records, safety management

systems, etc.

Overpressure Protection

The NTSB investigation into the Merrimack Valley incident is [*ongoing*](#), but among the preliminary issues identified by the NTSB is detection of abnormal system pressure. As a result, we expect discussion and debate regarding the sufficiency of overpressure protection for distribution pipeline systems as well as emergency response and monitoring of overpressure protection.

2. Construction Issues

While PHMSA does not have express siting authority for the construction of new pipelines, it maintains construction and design regulations that would apply to those pipelines. Further, the industry has recently experienced some challenges associated with pipeline construction or infrastructure updates, and as a result there may be specific proposals along those lines. These may relate to work plans, subsidence, directional drills, oversight of contractors, management of change procedures, etc.

3. Emergency Shutdown Valves, Communications and Overpressure Protection

PHMSA has been working on proposing an automatic shut-off or remote-controlled valve (ACV/RCV) rule regarding rupture detection since 2013 and expects to issue the proposal in 2019. If the proposed rule does not issue prior to PSA reauthorization legislation, we expect the topic to be included in legislation drafts. The Merrimack Valley incident also brought to light issues associated with the operator's incident response and communications, which may be a topic of the discussions. Further, in light of the preliminary findings of the Merrimack Valley NTSB investigation, it is possible that pressure detection, monitoring, and overpressure protection will be discussed as they apply more broadly to pipeline systems.

4. Outstanding Rules tied to Statutory Mandates

As noted above, numerous key mandates remain unaddressed from prior PSA reauthorizations, a number of which were intended to focus on records and inspection issues arising from high profile incidents. Most notably, these include finalizing the hazardous liquid rule (which was expected before the end of 2018) and the 'gas mega rule;' the latter has been split into three rulemakings and is still working its way through the pipeline advisory committee process under the PSA (now on hold because of the government shutdown). Because PHMSA has already failed to meet relevant deadlines, Congress may impose new deadlines with updates to Congress. Further, reauthorization discussion may analyze what some critics have cited as challenges under the PSA to PHMSA rulemaking, including balancing safety risks against the economic benefits.

5. State Involvement

When certified by PHMSA (and at times even where they are not certified by PHMSA), states are increasingly active in pipeline safety through construction inspections, general oversight and enforcement authority, and incident response. Some states have broadly interpreted their jurisdiction under the PSA and authority under state statutes. Past reauthorization changes

touched upon and expanded in part the ability of a state to participate in pipeline safety. In addition, a 2018 Government Accountability Office (GAO) [report](#) recommended that PHMSA develop an inspection workforce plan to ensure that it maintains an adequate mix of federal and state resources for interstate pipelines. Legislative proposals may be drafted in light of GAO's recommendations and to ensure that state pipeline safety programs include adequate training and other measures to ensure consistency in application of PHMSA rules and enforcement.

6. *Cybersecurity*

There has been some debate recently regarding whether the pipeline industry has sufficient protections in place to ensure reliability. Targeting of pipeline infrastructure technology and operational monitoring programs (such as SCADA) by foreign nation states and other bad actors is not new, although intrusions continue. In addition, the GAO issued a [report](#) that determined that the Transportation Safety Administration charged with pipeline security oversight (in part and in coordination with PHMSA), is not doing enough to face future challenges. House Energy and Commerce Committee members reintroduced legislation intended to increase federal protections protecting pipelines from cyber threats that could disrupt operations and some have called for changes at the Department of Homeland Security (DHS). Ranking Senate Committee members Cantwell (D-WA) and Manchin (D-WV) with oversight of pipelines have called for a response from DHS. It is also possible that associated changes could be proposed since PHMSA participates in [oversight of pipeline security](#), primarily as it relates to physical security (as opposed to cybersecurity), and since the subject of the cyber intrusions are operational programs required by PHMSA rules.

Summary

It is likely that some potentially significant changes to the pipeline safety rules could be proposed in the upcoming Pipeline Safety Act reauthorization (or other legislation coming out of the 116th Congress). This is particularly true considering the recent Merrimack Valley distribution pipeline incident, the newly divided Congress, and the country's increased reliance on natural gas and oil over coal. While the PSA reauthorization proposals could vary, we expect discussion specific to distribution pipelines and issues highlighted by the Merrimack Valley incident, construction issues, valves/overpressure protection, outstanding rulemakings, as well as updates to PHMSA procedural rules. Other issues could include cybersecurity, state oversight of pipeline safety, and older proposals from prior reauthorizations. If not in the PSA reauthorization, some of these more general issues such pipeline construction and cybersecurity may get traction in an energy bill which is likely to include some form of infrastructure package.