

INSIGHTS

Deadline Approaching for Input on Regulatory Improvements

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The U.S. Department of Transportation (DOT) recently published a [notice](#) inviting public comment to identify statutes, rules, regulations, and interpretations in policy statements or guidance that “unjustifiably delay or prevent completion of surface, maritime, and aviation transportation infrastructure projects.” As stated in the notice [[attached](#)], in keeping with President Trump’s regulatory reform agenda, DOT and other federal agencies are in the process of reviewing existing policy statements, guidance documents, and regulations that might pose impediments to transportation infrastructure projects. The upcoming deadline to provide input on that review is July 24, 2017. We encourage industry to consider submitting comments, particularly given DOT’s statement that comments are not restricted to burdensome regulations, but also extend to policy statements, interpretations and guidance.

PHMSA itself has issued considerably more informal guidance documents than formal rulemakings over time (e.g., between January 2012 to October 2014, PHMSA issued almost five times as many informal guidance documents as substantive final rules, two of which are interim final rules). Guidance can be useful to assist in identifying an agency’s expectations but it neither has the force of law nor is it enforceable or admissible in administrative or judicial proceedings as a basis for a claim or defense. Further, and by way of example of guidance that may be considered an impediment to projects, some DOT guidance documents arguably conflict with the current Administration’s efforts to promote energy infrastructure projects, such as the advisories and associated guidance documents issued on establishing expansive views of [commencement of construction](#) for notification purposes and on [flow reversals, product changes and conversion to service](#). Other examples of impediments that unjustifiably delay projects include PHMSA’s involvement with the National Environmental Policy Act (NEPA) review of natural gas projects seeking a Certificate for Public Convenience and Necessity from the Federal Energy Regulatory Commission (FERC).

This is a rare opportunity for industry to seek improvements to the rules and practices of DOT and its various modes, and we urge you to consider submitting comments. We are available to assist in the development of comments on these issues.