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Industry Responds to U.S. Made Pipe Directive

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Industry trade groups anticipate construction delays and cancelations, higher costs, and consumer impacts if the Trump administration's January 24, 2017 ***Executive Memorandum***, requiring that all new and repaired pipe be made in the U.S., is implemented. In ***comments*** filed to the Department of Commence by oil and natural gas industry trade associations, INGAA, AGA, GPA, API, and AOPL, the associations point out numerous challenges presented by the directive and various exclusions and exceptions that would need to be carved out. At the same time, the trade groups committed to engaging with the executive branch, regulators, and steel manufacturers to promote job growth and affordable energy in the U.S.

The Trump administration's Executive Memorandum directs the Secretary of Commerce by July 23, 2017 to "develop a plan under which all new pipelines, as well as retrofitted, repaired, or expanded pipelines, inside the borders of the United States, including portions of pipelines, use materials and equipment produced in the United States, to the maximum extent possible and to the extent permitted by law." The Department of Commerce issued a ***request for comments*** on March 16, 2017, to stakeholders that appeared to expansively interpret the Executive memorandum to include line pipe and physical facilities attached to pipe. Commenters had until April 7, 2017 to respond and 89 comments were filed, many by trade groups representing numerous member companies.

Collectively, INGAA, AGA, GPA, API, and AOPL represent many hundreds of oil and gas energy companies. In responding to the Department's request for comments, the associations indicate that under existing labor hiring practices and material and equipment sourcing practices, an estimated 70% of spending for existing oil and gas pipeline projects already ends up in the pockets of American workers and business owners. The comments suggest that new policies should focus on supply side policies (by streamlining permit requirements, lifting tax and trade barriers, etc.), instead of placing new restrictions on demand side source materials for new pipe construction. To do otherwise will have unintended consequences, with adverse effects on the oil and gas energy industries.

These trade associations estimate that 40 to 50 mills make line pipe for U.S. pipeline construction projects, only about half of which are located in the U.S. In addition, when it comes to making large technically sophisticated pipe (as required by PHMSA rules), there are only a handful of American manufacturers. Further, because pipe quality steel and line pipe is among the most expensive and time-consuming products, many domestic mills prefer to produce less time and cost intensive products. The few mills capable of making these pipes would be further taxed by the directive to use raw steel made in the U.S. because than 50% of steel plate and coil used to make these pipes is imported.

As a result, the associations highlight major constraints on the procurement of adequate quantities of line pipe materials and equipment in the U.S. at necessary technical specifications and in time to meet market demands and/or regulatory requirements. Existing infrastructure must meet maintenance and repair regulatory timeframes, and delays related to sourcing the line pipe or equipment could require operators to shut down pipelines or reduce pressure. Together, potential impacts of this directive include cost and service disruptions for industry and consumers, reducing or delays to investment in projects, and a resulting reduction in jobs.

The comments stress that exclusions are necessary for projects that already have shipper commitments and/or pending or issued federal or state permits, such as interstate projects with a pending or issued FERC certificate, or approval by a state agency. In addition, a phase-in period is necessary to allow operators, mills and distributors to prepare for these changes and bring additional domestic production online. Further, as a possible model for exclusions, the associations reference existing exceptions to current "Buy America" requirements (*i.e.*, where those requirements are inconsistent with public interest, steel or other materials are not produced in the U.S. in sufficient and reasonably available amounts or are not of a satisfactory quality, or where inclusion of domestic material would increase the costs of the project by a certain percentage). *See 23 U.S.C. §313; 49 U.S.C. §50101; 49 U.S.C. §24405(a)*.

The Executive Memorandum's intent was *not* to delay or preclude new pipeline construction, repair or replacement, as evidenced by other presidential directives issued to expedite pipeline construction projects. To avoid that unintended consequence, the Department of Commerce should prepare its Plan to acknowledge the practical realities of existing U.S. steel manufacturing infrastructure, which is insufficient to meet the existing and anticipated needs of the oil and gas pipeline industry. Further, the Executive Memorandum states that the "made in USA" mandate should only apply "*to the maximum extent possible.*" These acknowledgements should allow the Commerce Plan to clarify that in those situations where no pipe is manufactured and/or assembled in the U.S. that meets the specifications for a given construction, repair or replacement project, other alternatives for sourcing the necessary materials may be used.

Finally, the Executive directive applies "*to the extent permitted by law*," and any Plan should acknowledge legal constraints and clarify how such requirements could be implemented and under what legal authorities. At present, it remains unclear whether the Department of Commerce has legal authority to implement this directive.