

INSIGHTS

## All I want for Christmas is ... regulatory certainty?

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Last week, PHMSA's oil and gas pipeline technical advisory committees convened to [review and discuss](#) significant pending rulemakings and regulatory reform initiatives, among other topics. At the same time, the White House touted its deregulation efforts, including the purported elimination of 22 regulations in the past year for each new rule passed. For an agency that is facing outstanding statutory mandates to enact certain regulations, with reauthorization looming in 2018, it is expected that PHMSA will promulgate some new rules in the New Year. It is not yet known, however, what the content of those rules will be and whether the expansive gas 'mega rule' will be among those finalized in 2018. Given the overall regulatory climate to reduce regulation and burden, a little certainty might be appreciated in the New Year.

In introductory statements to the joint session last week, the newly appointed PHMSA Administrator Skip Elliott relayed that the Department of Transportation as a whole, and PHMSA specifically, has been taking an aggressive review of both existing and proposed rules in order to identify ways to reduce regulatory burdens, so as to achieve less onerous regulations that do not sacrifice safety. Elliott stated that the Agency desires to work together with industry towards both the goal of zero incidents and to have rules in place that yield the greatest safety benefits. He also encouraged industry to accelerate their own voluntary safety efforts. Elliott emphasized that the Agency's primary goal is to promote safe and reliable transportation. The Agency then went on to provide an overall regulatory update, and explain in more detail the efforts it has undertaken to improve the regulatory process. These include bringing an economist on staff in order to improve the economic regulatory analysis process for proposed rules, particularly since both significant and nonsignificant rules now have to be approved by the Secretary of Transportation.

The primary drivers behind PHMSA's regulatory program at present were described as twofold: (1) the outstanding statutory mandates from the 2011 and 2016 PIPES Acts as well as recommendations from the National Transportation Safety Board, Government Accounting Office and the Department of Transportation Office of Inspector General; and (2) regulatory reform. As to the latter, as a result of the regulatory freeze declared in January, the Agency's final hazardous liquid rule was withdrawn and is still being reevaluated with executive leadership. In terms of implementing the Executive Orders on regulatory reform, PHMSA representatives explained that the Agency developed a process that has been very effective, perhaps best illustrated by the fact that the Agency reported that it self-identified 75% of the issues and proposals offered by stakeholders in response to the Department of Transportation's [request for regulatory reform comments](#). These include regulations,

standard practices, guidance documents, information collection initiatives and reporting. The Agency is in the process of finishing its review following stakeholder input, and will then start a more focused programmatic review and economic analysis, emphasizing again the Agency's desire to make regulations efficient but to also maintain safety.

It is against this backdrop that President Trump announced on Thursday, December 14th, that "Within the first eleven months, we canceled or delayed over 1,500 planned regulatory actions, more than any previous president, by far." This reportedly includes the withdrawal or removal of over 800 proposed regulations, and delay of another 700 regulations. Trump further claimed that—as a result of the "two for one" [executive order](#) issued earlier in 2017 announcing the intent to repeal two regulations for every new one promulgated—the Administration has been able to exceed that goal by eliminating 22 old regulations for each new rule [proposed](#), resulting in a purported cost savings of \$8.1 billion (citing OIRA and OMB's [compilation](#) of regulatory reform efforts).

Under this Administration, many agencies have taken deregulatory actions in fiscal 2017, and Trump reported that federal agencies collectively eliminated 67 regulations and only proposed three new regulations. Trump also disclosed a plan to drastically reduce the number of pages in the *Federal Register* in 2018 to "1960 levels," when the *Federal Register* consisted of approximately 20,000 pages whereas now it is closer to 200,000 pages. [Washington Post, Trump pledges to cut regulations \(Dec. 14, 2017\)](#). President Trump asserted that the result of such drastic deregulatory action is an improved economy, opining that "you see the results, when you look at the stock market, the results of companies, and when you see companies coming back into our country." *Id.*

Now that the Trump Administration and Congress have filled more vacant leadership positions within federal agencies, energy project approvals are being issued and federal regulators have more direction with respect to policy initiatives and priorities. As a result, we should see more focus at PHMSA and other agencies in 2018 on moving forward with deregulation and returning to normal administrative and enforcement activities. Streamlining regulations to be more effective and not unduly burdensome is a reasonable goal and is consistent with existing statutory requirements for major administrative agency actions. Uncertainty in applicability of regulations or the manner in which they are implemented can lead to public safety concerns, however. At the same time, NGO litigation challenging pipeline and LNG projects is on the rise throughout the country, and some States are similarly opposed to these projects, denying what were historically routinely issued permits and certifications. Combined with existing and projected market conditions, all of these factors may impact the ability of industry to develop new projects, plan for the coming years, and continue to grow.

A little regulatory certainty would help.