

PIPES Act Presents Changes For Energy Providers

6/13/2007 --- The Pipeline Inspection, Protection, Enforcement and Safety Act of 2006, commonly referred to as the "PIPES Act," reauthorizes federal pipeline safety at the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration through 2010.

PHMSA is the federal agency responsible for overseeing the safety of approximately 2.3 million miles of interstate liquid and gas pipelines. Natural gas and liquid products transported through regulated lines account for approximately two-thirds of the total energy products consumed in the United States.

Among the changes or pending issues are:

--Executive statement. One far-reaching impact of the act will now require the submission of a statement by a senior company executive attesting to the accuracy of annual and semiannual pipeline integrity management program performance reports. This means that the executive will have to confirm to PHMSA that he personally reviewed the report and, to the best of the executive's knowledge, the report is true and complete.

--Safety requirements for low-pressure lines. The PIPES Act also provides for new federal oversight of previously unregulated low-stress (low-pressure) liquid pipelines. Bowing to pressure from safety groups, Congress required the agency to finalize more comprehensive regulations no later than Dec. 31 and mandated that the rule must cover virtually all low-stress lines regardless of maximum operating pressure.

Previously, the agency had exempted lines—regardless of size—operating at less than 80% of maximum operating pressure. As a result, smaller operators may find themselves in a position where marginally profitable lines are no longer profitable.

--Gas reassessment interval. Congress did not incorporate into law the Bush administration's proposal to modify the seven-year reassessment interval for natural gas pipelines. It did, however, continue the preexisting federal mandate to require PHMSA to review a Comptroller General report on the reassessment and to submit further legislative recommendations to Congress within 60 days of the Act's passage.

At a recent congressional hearing, PHMSA testified it has the authority to waive the seven-year reassessment interval on a case-by-case basis. However, there is no established agency procedure to consider or grant specific waiver requests, although the agency has been consulting with the

industry on waiver protocols since last October.

Affected pipeline companies would be wise not only to work closely with PHMSA officials to understand the mechanism and protocols to be used for obtaining relief, but should be proactive in doing so as the agency formulates new legislative language to comply with the congressional mandate.

--Damage prevention. Damage to pipelines resulting from a crowded underground infrastructure is a major problem facing pipeline operators and is a leading cause of pipeline incidents, resulting in property damage, death or injury. The PIPES Act provides for significant additional protocols and authorizes a state civil penalty to address incidents arising from damage caused by construction-related activities.

By expanding its applicability to excavators and operators alike, the new law seeks to reduce the number of One-Call violations (One Call law requires at least 48-hour advance notification to the state One Call center prior to any excavation so that hitting underground gas, electric and other utility lines can be avoided).

The Act also offers incentives to states to leverage technology in order to prevent incidents and lower the call-out rates for operators. Operators and excavators must pay close attention to these new requirements in order to avoid federal enforcement action.

--State grants. The Act also raises the matching share that the federal government will provide to states for state pipeline-safety programs over the next six years from 50 percent to 80% for every dollar spent by states.

The states, which oversee approximately 90 percent of operator compliance with federal safety regulations, had complained that ever-increasing federal oversight and regulatory responsibilities were unfairly requiring states to absorb cost increases associated with carrying out the program.

The Act also authorizes emergency response management and training grants to state and local governments for the training of emergency responders to protect the public and environment from pipeline accidents.

--Other provisions. Other provisions of the PIPES Act address providing the public with more information regarding pipeline enforcement actions; bring direct sales lateral pipelines under federal oversight by including them in the definition of a gas pipeline facility; and authorize a phased addition of 45 federal inspection and enforcement personnel to the agency's pipeline safety program by 2010.

The lesson for the interstate pipeline industry is clear: Companies that stand to be affected by the newly enacted PIPES Act and upcoming interpretive rule-making procedures at the Department of Transportation and the Office of Management and Budget would be prudent to weigh in with federal regulators at the earliest opportunity in order to protect their vital business

interests.

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