

Congress Reauthorizes Pipeline Safety Act as Part of Year-End Spending and COVID-19 Relief Package

On December 21, 2020, the U.S. Congress passed the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (the Act) as part of a larger year-end spending and COVID-19 relief package. The Act reauthorizes the federal pipeline safety program through September 30, 2023, and establishes annual funding levels for the 2021, 2022, and 2023 fiscal years. The Act also makes other important changes to the federal pipeline safety laws administered by the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency).

The Act requires PHMSA to issue new rules for gas pipeline leak detection and repair programs and idle pipelines, update the operations and maintenance standards for certain large-scale liquefied natural gas facilities, and finalize outstanding rulemakings for gas gathering lines, class location changes, and the definition of unusually sensitive areas. The Act establishes additional due process protections for PHMSA enforcement actions, authorizes a new declaratory order proceeding, and obligates PHMSA to consider an operator's self-report in assessing a civil penalty. Other noteworthy provisions in the Act include authorizing the implementation of a new pipeline safety testing program, the performance of various research and development studies, and the creation of a National Center of Excellence for Liquefied Natural Gas Safety. Lastly, the Act contains various new requirements for distribution lines in response to the 2018 incident in Merrimack Valley, Massachusetts.

The Act does not include several provisions that Congress proposed in earlier versions of the legislation. For example, the Act does not eliminate PHMSA's obligation to consider the costs and benefits of changes to the pipeline safety regulations or prohibit the use of direct assessments as part of a pipeline operator's integrity management program. The Act does not change the mens rea (or mental state) requirement in the criminal statute or expand the list of prohibited activities covered under the criminal provision. Nor does the Act authorize the use of administrative law judges in PHMSA enforcement actions, increase the amount of civil penalties that can be imposed for violations of the pipeline safety laws or regulations, or authorize the filing of mandamus actions challenging PHMSA's failure to perform non-discretionary duties. The elimination of these provisions likely reflects the compromises that became necessary to achieve the Act's passage before of the end of the current Congress.



CONTACT

KEITH J. COYLE

KCoyle@babstcalland.com
202.853.3460

ASHLEIGH H. KRICK

AKrick@babstcalland.com
202.853.3466

505 9th Street NW
Suite 700
Washington, DC 20004
202.853.3455

BABSTCALLAND.COM

The passage of the Act represents the culmination of a multi-year effort to reauthorize the federal pipeline safety program, which expired on September 30, 2019, under the terms of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016. While significant progress has been made in recent years, PHMSA is still working to satisfy certain outstanding rulemaking mandates from the 2016 legislation and the prior reauthorization of the federal pipeline safety laws, the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011.

Babst Calland intends to release another client alert in early January 2021 that provides additional insights on the Act and the upcoming transition to a new presidential administration.



JAMES CURRY



KEITH COYLE



BRIANNE KURDOCK

Led by three former Pipeline and Hazardous Materials Safety Administration (PHMSA) attorneys, our Pipeline and Hazardous Materials Safety practice group counsels pipeline and midstream companies, gas utilities, terminal operators, investors, trade associations, and other stakeholders, throughout the United States. James Curry, Keith Coyle and Brianne Kurdock together have more than 25 years of experience with a multitude of pipeline safety issues. They partner with client engineering and legal personnel to address day-to-day compliance questions and develop business and regulatory strategies.