

(PHMSA's new authority to issue emergency actions)

PHMSA Finalizes Rule Expanding Emergency Authority

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Law360, New York (October 5, 2016, 5:31 PM EDT) -- The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration on Monday revealed a rule governing the procedures of its new power to issue emergency orders to ensure pipeline safety, an authority Congress bestowed upon the agency with its reauthorization in June.

When President Barack Obama **signed** the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016 in June, it reauthorized PHMSA through 2019 and gave it new powers to issue emergency orders to address imminent safety hazards.

"Pipeline incidents can have devastating impacts on local communities and the environment," U.S. Transportation Secretary Anthony Foxx said in the statement. "The new regulations carry out DOT's enhanced authority to compel industry to take immediate action to address problems that put people, property, or the environment at risk. We hope we never have to use it, but it is an important safety tool that will result in greater protection for the American public."

The agency said it issued the final rule without a notice and comment period because of the 60-day time frame given by Congress to issue interim regulations. The agency said it would accept comments on the rule as it prepares a final regulation, which it must do by March 19, 2017.

The emergency order authority gives the agency the ability to impose restrictions, prohibitions and safety measures on owners and operators of gas or hazardous liquid pipeline facilities without notice or hearing if it deems an unsafe condition to be an imminent hazard.

The agency has previously been able to issue corrective action orders on single operators after a hearing, but the broader emergency order authority would have more far-reaching and immediate effects.

"Unlike a [corrective action order] issued to a single operator, an emergency order would affect multiple or all operators and/or pipeline systems that share a common characteristic or condition," the rule reads.

Such circumstances might include a natural disaster in a particular region, the discovery of a serious flaw in supplier materials, or "where an accident

reveals a specific industry practice that is unsafe and needs immediate or temporary correction,” according to the rule.

The PIPES Act is a four-year reauthorization of PHMSA and strengthens pipeline safety, clarifies safety oversight efforts, and provides greater regulatory certainty in connection with transporting energy commodities.

On the heels of several accidents involving oil pipelines, gas leaks and derailments of trains carrying crude oil, lawmakers on Capitol Hill have mostly been on the same page and seamlessly advanced legislation addressing pipeline safety. The **House approved** the PIPES Act on June 8, and the Senate **gave it the green light** on June 13.

The measure includes provisions aimed at closing gaps in federal standards, enhancing the quality and timeliness of agency rule-makings, and promoting the better use of data and technology to improve pipeline safety, an endeavor that has also extended to rail carriers that transport crude oil.

The PIPES Act also requires PHMSA to complete several tasks given to it in a 2011 pipeline safety bill that hadn’t been completed yet.

Notably, the bill also demands PHMSA undertake a rule-making for underground gas storage facilities. That has taken on greater urgency in light of the gas leak at Southern California Gas Co.’s Aliso Canyon storage facility in October 2015. The incident displaced thousands of area residents, with the leak finally being sealed in February.

The PIPES Act also includes critical reforms and new tools to protect communities across the country from serious accidents involving the transportation of gas and hazardous liquids by pipeline.

For example, the measure establishes a working group made up of PHMSA and state officials, industry stakeholders, and safety groups to develop recommendations on how to create an information sharing system to improve safety outcomes. And the bill authorizes PHMSA to create a national integrated pipeline safety database to have a clearer picture of federal and state safety oversight efforts.

--Additional reporting by Keith Goldberg and Linda Chiem. Editing by Emily Kokoll