

INSIGHTS

Congress Turns its Attention to Pipeline Safety Act Reauthorization

April 4, 2019

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The first Congressional Hearing on Pipeline Safety Act Reauthorization for 2019 was held this week before the House Transportation and Infrastructure Committee. The Hearing did not have as much drama as [last summer's Hearing](#) before the same Committee, where PHMSA Administrator Skip Elliott was asked sharply to explain why the Agency had failed to fulfill so many Congressional mandates and National Transportation Safety Board (NTSB) Recommendations. In his written testimony at this week's Hearing, Administrator Elliott stated that "When I spoke [here] last year, I heard clearly from [Committee] members that finalizing outstanding Congressional mandates must be a top priority." The Committee staff report issued for the Hearing listed 12 "unmet mandates," and Administrator Elliott's written testimony conceded that PHMSA yet to address 8 mandates from the 2011 Pipeline Safety Act (PSA) reauthorization, and another 4 from the 2016 PSA reauthorization. Of that dozen outstanding mandates, 4 relate to reports and 8 involve rulemaking. Jennifer Homendy, a member of the NTSB, testified that the NTSB has 24 "open" recommendations to PHMSA, several on the Board's "most wanted" list for completion. Homendy previously served as the Democratic Staff Director of the Subcommittee on Railroads, Pipelines, and Hazardous Materials for the House Transportation and Infrastructure Committee.

The Committee questioned Administrator Elliott and other individuals testifying about the status of various rulemakings and the reasons for delay. Administrator Elliott stated that rulemaking is *'an iterative process, with lots of steps along the way.'* He was challenged on that point by Representative Lipinski (D-Illinois), Chairman of the Subcommittee, who asked Elliott to describe the reasons for delay, and explain why so many people at the Department of Transportation without special expertise in pipelines need to review draft rulemakings. NTSB member Homendy said she believes there should be more transparency in the rulemaking process at PHMSA/DOT, because *'it is difficult to know where a rulemaking is at with PHMSA, and at what stage in the process.'* PHMSA Administrator Elliott also stated that while the Agency works to complete its Congressional mandates and implement NTSB Recommendations, its *"rulemaking efforts are driven by the belief, consistent with Executive Orders 13771, 13777 and 13783 and other legal authorities, that there should be no more regulations than necessary..."* and those regulations should be *"right sized...to have the maximum safety impact"* and encourage greater investment in safety research and technology development. (The [Executive Orders](#) noted above were issued in early 2017 as part of the current Administration's efforts at de-regulation and regulatory reform).

Administrator Elliott also gave updates on three pending rulemakings of significant interest to the public and the regulated community: (1) the *Liquids Rule* (dating back to the 2011 PSA Reauthorization) was said to be ‘one of PHMSA’s highest priorities,’ with the final rule scheduled to be issued by May 27, 2019; (2) the *Gas Transmission Rule* ‘has been under review for the past two years,’ and has been split into several smaller rules to speed review and promulgation, the first of which is reportedly scheduled to be issued in final form by July 2, 2019 and focuses on satisfying Congressional mandates; and (3) the *Valve and Rupture Detection Rule* which is under development to address leak and rupture detection, and is intended to meet two Congressional mandates.

The Administrator also touted [***PHMSA’s publication***](#) of the final Plastic Gas Pipe issued in November 2018 stating that it should advance the replacement of old cast iron and steel pipe prevalent in many distribution pipeline systems. Although not noted by Elliott during the Hearing, PHMSA has at least unofficially suspended enforcement of several aspects of the Plastic Gas Pipe [***final rule***](#) until resolution of a [***petition for reconsideration***](#) that was filed by the American Gas Association (AGA) on December 20, 2018.

As expected, Committee members and several testifying panelists noted recent fatality pipeline incidents (Columbia Gas in Massachusetts, Targa in Texas and an Atmos incident). Two of these incidents involved gas distribution lines, while the third occurred on a gas gathering line. Both gathering and distribution lines are clearly under consideration for further statutory amendment. In addition, several testifying panelists stated that PHMSA needs more resources and urged the Agency’s budget to be exempt from further cuts.

In terms of other specific recommendations for reauthorization, NTSB member Homendy stated that one of the Board’s recommendations has been to preclude operators from using direct assessment as a sole means of pipe inspection. NTSB member Homendy and several other witnesses questioned the effectiveness of PHMSA’s integrity management regulations and emphasized the need for more effective leak detection regulations. Referring to Administrator Elliott’s call for de-regulation and regulatory reform and NTSB’s recommendation for more transparency in rulemaking, the Pipeline Safety Trust and independent expert Richard Kuprewicz both urged the Committee to eliminate cost-benefit considerations from PHMSA rulemaking. Andy Black, President and CEO of the Association of Oil Pipe Lines encouraged Congress to allow more pilot programs to demonstrate new technology, noting that regulations often cannot keep up with fast moving technology. The list of other issues under consideration by the Committee in addition to those noted above includes remote control valves, spill response planning and response and coordination with state and local entities.

A Hearing on PSA reauthorization has been scheduled before the Senate Commerce Committee for April 10, 2019 at 2:30 p.m. The House Energy & Commerce Committee is expected to hold a Hearing later in April or in May. No draft bills have yet been circulated.