

Client Alert

International Trade & Litigation and Energy & Natural Resources Practice Groups

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Department of Commerce Seeks Public Input on Pipelines "Made in America;" Comments Due April 7, 2017

On March 16, 2017, the Department of Commerce published a Federal Register notice requesting input on the use of American-made materials in the construction and maintenance of American pipelines. Referring to President Trump's January 24, 2017 Presidential Memorandum calling for American pipelines to be made with American steel, the Commerce Department is now seeking guidance on the implementation of the President's directive from pipeline owners, operators, manufacturers, distributors, and their suppliers. Others may wish to weigh in, as well.

In his January 24th Memorandum, President Trump directed the Secretary of Commerce to develop a plan to require domestic sourcing of materials for the construction, retrofitting, repair, and expansion of pipelines inside the United States. That plan is to be delivered to the President by July 23, 2017.

The Department of Commerce now seeks information on:

- U.S. demand for line pipe
- Current pipeline construction technology and requirements
- The domestic supply chain for pipeline materials, including capacity, capacity utilization, and inventories
- Factors influencing the decision to source line pipe domestically
- Federal permitting requirements

The Federal Register notice communicating this request may be found at <https://www.regulations.gov/document?D=DOC-2017-0002-0001>.

The Commerce Department notice is significant in several respects. It defines the term "pipeline" as referring to "any conduit of pipe used for conveyance of gases, liquids or other products," suggesting that the plan responding to the President's Memorandum could apply not only to cross-country pipelines used in the oil & gas industry, but to pipelines employed in other sectors, such as water and wastewater transmission and distribution, petrochemicals, district heating and cooling and manufacturing. The notice asks specifically how domestic content requirements would affect commenters' operations, suggesting that Commerce may be sensitive to

evidence suggesting that content requirements could have significant impacts on affected sectors. It is targeted at “all stakeholders involved in the manufacturing and construction of pipelines (including the retrofit, repair, or expansion of existing pipelines) as well as the production and distribution of pipeline materials,” but because many other industry sectors stand to be affected by implementation of a new domestic content requirement, responses are likely to be offered by many parties other than those targeted.

Interestingly, the notice does not identify the source or sources of the legal authorities on which Commerce would rely in promulgating the plan it is to develop. Nor does it request comment on this subject. It would be surprising if this the question of legal authority, as well as questions regarding the consistency of any American content requirement with U.S. trade treaty obligations, were not to feature prominently in comments submitted in response to the notice.

Participants in the pipeline and oil & gas industries, pipeline construction contractors, steel producers, pipe manufacturers, pipeline shipper interests and other parties that could be affected by a pipeline content requirement should consider making their views known to the Commerce Department by filing comments. Comments must be received by 5 PM EDT on April 7, 2017.

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