

Policy Update: Pipeline and Hazardous Materials Safety Administration Reauthorization

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is the entity within the United States Department of Transportation (USDOT) responsible for “protect[ing] people and the environment from the risks of hazardous materials transportation.”¹ As the Nation’s lead hazardous materials regulator, PHMSA sets and enforces policies and standards, educates the public about hazardous materials transportation, and conducts research to prevent incidents.² PHMSA’s authorization officially expired on September 30, 2015, but is able to continue to operate with ongoing appropriations while Congress works on reauthorization legislation.

The Committee on Commerce, Science, and Transportation has jurisdiction over PHMSA in the U.S. Senate. The Committee on Energy and Commerce and the Committee on Transportation and Infrastructure share jurisdiction over PHMSA in the U.S. House of Representatives. All three committees held pipeline safety hearings over the past several months, and while both chambers have produced PHMSA reauthorization legislation, neither has advanced the measure out of their respective bodies. Both bills are similar and largely non-controversial, but there are certain provisions in each bill that prompt resistance.

Both the House and Senate bills include the following similar provisions³:

- **Reauthorization of appropriations for PHMSA.** The Senate is further along in the process, and as a result is more specific in duration and spending levels for each of the programs overseen by PHMSA.

- **Regulatory update requirement.** These requirements add a level of accountability to past due regulatory efforts through status updates, updated timelines, and other similar requirements.
- **Integrity Management Reviews.** These provisions require the Comptroller General to conduct thorough reviews of PHMSA’s gas transmission pipeline and hazardous liquids pipeline rules and submit a report to Congress.
- **Standards for Inspection Reports.** Requires PHMSA (or relevant state authority) to conduct post-inspection briefings with the operator, issue the operator a final report in a timely manner, and submit an annual report to Congress detailing these actions.
- **Study on Improving Damage Prevention Practices.** Requires USDOT to conduct a thorough study on how available technologies can be used to improve outdated Damage Prevention programs and reduce the likelihood of pipeline incidents.
- **Addressing PHMSA workforce needs.** Provides PHMSA time-restrictive direct hire authority to address current workforce needs.
- **Information sharing system.** Requires USDOT to convene a working group composed of government, industry, academics, safety advocacy groups, labor, and pipeline inspectors to share information and explore opportunities to improve pipeline safety.
- **Nationwide regulatory database.** Requires USDOT to examine and submit a report to Congress on the feasibility of creating an

¹ Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, “Mission & Goals,” accessed March 2, 2016.

² Ibid.

³ See S. 2276, “Safe PIPES Act” and Discussion Draft, “Pipeline Safety Act of 2016.”

integrated national pipeline safety regulatory inspection database to improve communication and collaboration between federal and state regulators.

- **Underground storage facilities.** Creates new regulatory authority to develop uniform safety standards for underground storage facilities, and a new fee on facility operators, the proceeds of which will be available only for activity related to this new authority.
- **Response plans and high consequence areas.** Requires pipeline operators to include additional information in response plans. Names the Great Lakes an “ecological resource” for purposes of a high consequence area determination.

Controversial Provisions

In addition to the similar provisions articulated above, each bill included other provisions that were not captured in the opposite chamber’s legislation. Two of these provisions are viewed as particularly problematic by some and are seen as blockades to PHMSA reauthorization’s advancement.

The Senate bill included a provision requiring PHMSA to provide congressional committees with full, un-redacted versions of the oil spill release response plans submitted by regulated entities. Many are concerned this provision would expose sensitive information about the most vulnerable portions of the U.S. pipeline network, and the extent of the damage that could be caused by attacking them, to individuals hostile to the U.S. if they were somehow hacked or otherwise accessed by outside entities.

The House bill included a provision that would allow private citizens to bring lawsuits against PHMSA for “failure to perform” any of its regulatory duties related to pipeline safety. Some fear this provision would politicize PHMSA’s work and force PHMSA

to reallocate time and resources away from priority items in order to respond to unnecessary lawsuits.

Legislative Outlook

There is strong bipartisan and bicameral support for reauthorizing PHMSA, improving pipeline safety, and ensuring that mandates from past PHMSA authorizations are completed in a timely fashion. While the controversial provisions discussed herein will need to be resolved, it is highly likely that PHMSA reauthorization will be sent to the president’s desk by the end of May, if not sooner.

The Alliance for Innovation and Infrastructure (Aii) consists of two non-profit organizations, The National Infrastructure Safety Foundation (NISF) a 501(c)(4), and the Public Institute for Facility Safety (PIFS) a 501(c)(3). The Foundation and the Institute focus on non-partisan policy issues and are governed by separate volunteer boards working in conjunction with the Alliance’s own volunteer Advisory Council.