



Bi-Partisan PHMSA Reauthorization Effort Underway

December 8, 2023

Reading Time : **3 min**

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On December 6, 2023, the House Transportation and Infrastructure Committee approved the Promoting Innovation in Pipeline Efficiency and Safety Act of 2023 (PIPES or the Bill)¹ to reauthorize the Pipeline and Hazardous Materials Safety Administration's (PHMSA) safety programs for the next four years. The bipartisan legislation was introduced on November 29, 2023, with the goal of striking the correct balance between safe energy resource transportation and ecologically beneficial U.S. manufacturing. The Bill would mandate that guidelines be created to improve operations, recruit more safety experts, and enhance procedures to prevent damage from excavation. The Bill funds PHMSA pipeline safety initiatives with \$1.1 billion spread over four years. Among the important clauses of the Bill are the following:

Hydrogen Monitoring: PIPES would require that current hydrogen blending initiatives be examined, and the Secretary of Transportation would have to conduct a study to determine whether or not composite-material pipelines can be used to safely transport hydrogen and hydrogen blended with natural gas.² The Secretary would host a public meeting with interested parties, make a draft copy of the research available for public review and respond to input from the public in order to guarantee sufficient public involvement in finishing the study.³

Operator Accountability and Increased Stakeholder Transparency: If someone intentionally and knowingly causes a defect in a pipe, pump, compressor or valve that a pipeline operator owns and intends to use it in the construction of any pipeline facility, including an interstate

gas pipeline facility or interstate hazardous liquid pipeline, that compromises the facility's integrity or safety, they risk fines or imprisonment.⁴ A person also would face consequences if they were to interfere with the normal operation of a pipeline facility by turning or manipulating a valve in an unlawful or unexpected manner. PIPES would provide PHMSA further authority to impose civil fines on pipeline operators who violate safety regulations, as well as enhance criminal penalties for causing harm to or interfering with pipeline operations.

Provisions for Liquefied Natural Gas (LNG): In accordance with this bill, the Secretary of Transportation would create and call a Liquefied Natural Gas Regulatory Safety Working Group in order to make clear the jurisdiction of federal agencies over the approval and management of LNG facilities.⁵ Regarding the siting and design, construction, operation and maintenance, and operational and process safety rules of LNG plants, the Working Group will assess the authority of each federal agency. In order to ensure effective regulation of LNG facilities in the public interest, the Working Group will negotiate agreements between federal agencies to establish procedures for the application of each agency's respective authorities. This involves resolving conflicts arising from overlaps in jurisdiction among the federal agencies and, where feasible, avoiding conflicting or duplicative regulations, inspection protocols, and reporting requirements.

Carbon Dioxide Pipelines: Within a year of the Act's enactment, the Secretary of Transportation will evaluate the ways in which the owners and operators of gas pipeline facilities, hazardous liquid pipeline facilities and carbon dioxide pipeline facilities interact with the public and local or state emergency response organizations, as well as how they communicate safety information to them.⁶ Minimum safety requirements for the injection, extraction and storage of carbon dioxide incidental to pipeline transit will be established by the Secretary. The Secretary will set minimum safety requirements mandating that vapor dispersion modeling be used by all operators of carbon dioxide pipeline facilities to identify high consequence locations.

As indicated above, the Bill is comparatively light on rulemaking mandates, a change from prior PHMSA reauthorization bills that directed the agency to draft and finalize new pipeline safety regulations. Notably absent are directives to update the pipeline safety regulations for LNG terminal facilities, which are regulated under Part 193 of PHMSA's regulations, outside of a Working Group study. However, the Bill's initiatives highlight the country's growing interest in alternative fuels and need to compliment the federal government's focus on hydrogen and

carbon capture and sequestration as a means of carbon emissions abatement. In addition, there have been several high-profile cases of climate activists unlawfully entering pipeline property to manually shut off equipment. While these cases have resulted in criminal charges and convictions, the Bill would also create a secondary enforcement mechanism for these actions under the pipeline safety laws.

Before the Bill, or some version of it, can become law, it will need to get input from the House Energy and Commerce Committee, which also has jurisdiction over PHMSA reauthorization, and a Senate Commerce Committee counterpart will need to be introduced and negotiated, a task expected to take place in 2024. Akin continues to follow these developments and will provide updates as they become available.

¹ *Promoting Innovation in Pipeline Efficiency and Safety Act of 2023*, H.R. 6494.

² *Id* at P 29.

³ *Id* at P 30.

⁴ *Id* at PP 45-46.

⁵ *Id* at PP 47-49.

⁶ *Id* at PP 68-71.

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