

Pipeline Safety

## **PHMSA Considers Changing State Pipeline Authority (BNA)**

By *Rachel Leven*

Aug. 26 — The nation's pipeline safety regulator is considering changing and clarifying aspects of how it delegates authority to state regulators, and state regulators aren't thrilled.

The Pipeline and Hazardous Materials Safety Administration is considering limiting the role some state regulators play in the regulation of interstate pipelines, a move a state regulators' group opposes.

PHMSA also is establishing a process for decertifying a state's intrastate pipeline program if it is deemed inadequate, which the Pipeline Safety Trust says could offer the agency leverage in enforcement. “We would like states to focus their limited resources on [intrastate systems], but certainly interface with us on the interstate pipeline systems—where it makes sense for both of us [to work],” Zach Barrett, a director of state programs at PHMSA, said Aug. 26.

These shifts come months after the agency received a boost in funding from Congress that will allow it to add federal inspectors for the pipeline program. And even as state pipeline programs' performance has improved, all deaths or injuries associated with pipeline incidents in 2014 occurred on intrastate systems, according to Barrett.

Timing for these actions by PHMSA remains unclear. Barrett said that for the interstate pipelines, “we're not looking any time soon to de-structure our current interstate agents.”

Officials made their comments at a joint meeting of PHMSA's gas and liquid advisory committees, which was held in Arlington, Va., Aug. 25 and Aug. 26.

**Stage of States** With the exception of Alaska and Hawaii, all states as well as the District of Columbia and Puerto Rico have state pipeline safety authority over either or both gas and hazardous liquid pipelines. States are responsible for inspecting and enforcing rules for more than 80 percent of domestic intrastate transmission and distribution lines.

Under 49 U.S.C. §§ 60105-60106, states may have authority over intrastate gas and hazardous liquid pipelines through certifications or agreements with the federal regulator, using rules at least as stringent as those under PHMSA.

Additionally, states through an agreement with PHMSA may obtain authority to inspect interstate pipelines; however, PHMSA would conduct enforcement actions.

States' performance right now is “good,” although it can always be better, Barrett said.

States have reduced the rate of “serious” incidents that resulted in deaths or injuries on gas distribution systems by two thirds over the last 30 years, Barrett said. And while there was a slight uptick in 2014 in serious incidents to 26 incidents, serious incidents in 2012 and 2013 were 24 and 21, respectively—the lowest on record, he said.

**Interstate Authority** It isn't clear how or when PHMSA is looking to alter its use of interstate agreements that allow states to inspect interstate pipelines, or how many states currently use those agreements.

When asked whether the agency is looking to do away with interstate agreements, Barrett said, “We're not looking to do anything with all interstate agents that have formal agreements in place.” He highlighted that the agency could use or expand work with states through temporary interstate agent agreements for individual projects. Barrett said the agency is interested in hearing from states that want to “relinquish” their interstate status and still coordinate with PHMSA on individual instances. Those states could use their resources on their intrastate pipelines, he said.

However, Robert Miller, chairman of the National Association of Pipeline Safety Representatives, told Bloomberg BNA that what was discussed at the Aug. 26 meeting by Barrett equated to altering full joint partnerships between the state and PHMSA to be more at the agency's discretion. This would make it more difficult for states to inspect pipelines that they were trained to inspect and were doing a good job of inspecting, Miller said.

“We [NAPSR] don't think that it would be beneficial to pipeline safety to take programs that are already within the interstate agency agreement program to take them out of that program when they're doing a good job,” Miller, who is also program manager for Arizona, said. “We do take care of our state business. In our certification, we have to take care of our business in order to even participate in the interstate program.”

### **'Turf Battle.'**

Massoud Tahamtani, the Division of Utility and Railroad Safety director for Virginia's State Corporation Commission, told Bloomberg BNA Aug. 26 that Virginia is an interstate agent because there was a need for inspections and, at the time it entered the agreement, PHMSA didn't have the resources to adequately address that need. Now, PHMSA has more resources and staffing and wants states to use their resources on their intrastate pipelines to ensure those are safe, Tahamtani said.

“Unlike some of the other states, I want to spend the resources where it's needed. This is not a turf battle that the more you have the better off you are, in my opinion,” Tahamtani said.

Tahamtani said the temporary interstate agreement is still important, though, and states may still want to get involved.

For example, there is a potential 500-mile interstate gas transmission line that would go through Virginia. If that starts, Tahamtani said he would want Virginia to play a role in inspecting that line as a temporary interstate agent, “because PHMSA probably won't have enough resources to inspect that pipeline like we would.” A PHMSA pipeline official has already told Tahamtani “no problem,” he said.

### **Intrastate Programs**

The move to develop an administrative process for decertifying states' intrastate programs when they are not performing adequately is far less controversial, though still important.

The rule would formalize an authority the federal agency already has—and has used—to decertify an intrastate

program and to assume the state's inspection and enforcement duties “if we think a state is not up to speed,” John Gale, the PHMSA Office of Pipeline Safety's director of standards and rulemaking, said Aug. 25.

“Not that we plan on using that very often, but it will be a tool in the toolbox that we have in our regulations so that if need be—we can [use it],” Gale said.

Barrett cited Hawaii as an example where, when the state wasn't adequately inspecting pipelines or enforcing relevant laws, PHMSA decertified the state. Miller told Bloomberg BNA that the agency always had the decertification authority, it just wasn't codified.

Carl Weimer, executive director for the Pipeline Safety Trust, told Bloomberg BNA Aug. 26 that incidents such as one in 2010 in San Bruno, Calif., that resulted in eight deaths have highlighted instances where states haven't done a great job and have put “a lot of pressure on PHMSA” regarding its oversight of states.

### **Bluffing States**

With the funding Congress recently appropriated, it may be that the agency now has the resources to assume

responsibilities in certain states in a limited fashion, if states aren't adequately doing their job, Weimer said. This move by PHMSA could be its attempt to “define under what circumstances they would step in and use [that authority],” he said.

“I think it's an important tool to have in your tool bag—to bluff states with. I'm guessing it's more of a bluff than a reality at this point because I don't think they want to take on many states,” Weimer, who also emphasized his support for state inspectors, said. “But it's good [to] have that defined so that if states aren't doing what they're supposed to, then they can hold that over states' heads.”

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