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State regulators fear PHMSA may reclaim interstate pipeline oversight

By Sarah Smith

The U.S. Pipeline and Hazardous Materials Safety Administration may be moving toward reclaiming primary safety oversight for all interstate pipelines.

State pipeline safety program managers say PHMSA tipped its hand when it revised its [guidelines](#) for states involved in pipeline safety regulations on pipes that cross state lines.

"I think it's a very imminent possibility," Robert Miller, National Association of Pipeline Safety Representatives chairman, said Sept. 1 in an interview at the organization's meeting in Tempe, Ariz. "I don't think [PHMSA] really beat around the bush too much about the fact that they are looking to retract the interstate agencies that are out there now."

As of February this year, nine state agencies were acting as "interstate agents" for PHMSA, meaning they had entered an agreement with the federal administration to oversee the gas, hazardous liquids or both kinds of interstate pipelines within each agency's state. To be an interstate agent, an agency has to show it has a good handle on its intrastate pipeline responsibilities and its inspectors have to be trained to oversee interstate lines.

The federal regulator has been using this system for many years: Arizona, for instance, has been acting as an interstate agent since the 1980s, according to Miller, who is also the Arizona Corporation Commission's pipeline safety section supervisor.

But in guidelines revised in February, PHMSA said that "if federal inspection resources increase[,] PHMSA may transition existing interstate agents to time[-]defined agreements[,] allowing a transition period to plan for program change."

Multiple state program managers present at the NAPS meeting said they see that as an indicator that the federal regulator is planning to take away interstate pipeline oversight authority from the states — a move they say would be a step backward for pipeline safety.

"We are the ones who are most vested in the safety of those pipelines. We are the ones who know those pipelines and those right-of-ways and the intricacies that are involved in doing the inspections within our own states. We interact with our operators on a regular basis," Miller said. "We are the subject matter experts in our states in regulatory oversight."

State successes, slipups

In annual reviews, PHMSA has consistently given high marks to most interstate agents' work over 2008-2013, according to state program evaluations obtained by SNL Energy through a FOIA request.

There were a few shortcomings over that time. The Iowa Utilities Board in 2013 was not adequately thorough and timely with its record-keeping, the Public Utilities Commission of Ohio used the wrong inspection form twice in 2012, and the Public Service Commission of West Virginia failed to submit its inspection documentation on time over 2008-2010, the state evaluations showed. But by and large, most participating agencies' interstate programs have performed well in PHMSA's annual estimation.

US Pipeline and Hazardous Materials Safety Administration evaluations of state pipeline safety programs

	Interstate agent: Natural gas pipelines					
	2013	2012	2011	2010	2009	2008
Arizona Corporation Commission	6/6	7/7	7/7	7/7	7/7	3/3
Connecticut Department of Public Utility Control	7/7	3/3	3/3	4/4	6/6	6/6
Iowa Utilities Board	2/3	3/3	7/7	3/3	7/7	7/7
Michigan Public Service Commission	6/6	7/7	7/7	6/6	7/7	3/3
Minnesota Department of Public Safety	7/7	7/7	7/7	6/6	7/7	7/7
New York State Public Service Commission	7/7	7/7	7/7	7/7	4/4	4/4
Public Utilities Commission of Ohio	4/4	5.5/6	6/6	6/6	7/7	7/7
Washington Utilities and Transportation Commission	7/7	6/6	7/7	7/7	6/6	6/6
Public Service Commission of West Virginia	-	6/6	7/7	5/6	6/7	5.5/7

	Interstate agent: Hazardous liquids pipelines					
	2013	2012	2011	2010	2009	2008
Arizona Corporation Commission	7/7	3/3	7/7	7/7	3/3	6/6
California State Fire Marshal	-	3/3	3/3	7/7	2/3	7/7
Minnesota Department of Public Safety	6/6	3/3	6/6	6/6	6/6	7/7
New York State Public Service Commission	7/7	7/7	7/7	7/7	3/3	3/3
Virginia State Corporation Commission	3/3	6/6	3/3	4/4	6/6	6/6
Washington Utilities and Transportation Commission	7/7	3/3	7/7	3/3	6/6	6/6

Data as of 2014.

Bolded figures indicate the agency did not get full points for its interstate agent program that year.

Hyphen indicates null value.

Source: U.S. Pipeline and Hazardous Materials Safety Administration

Further, significant incident rates on gas transmission pipelines overseen by states have been lower in recent years compared to those under PHMSA's purview, according to Carl Weimer, director of the Pipeline Safety Trust. On hazardous liquids lines, the incident rates have been comparable for those overseen by states and the federal government, Weimer said in a presentation at the NAPS meeting.

However, Weimer acknowledged that there is "much more to that story." For one, 36% of serious incidents that occurred on gas distribution systems for 2014 through the present, according to PHMSA, lending support to PHMSA assertions that state resources might be better focused on intrastate systems.

Some state agencies have found themselves stretched too thin in trying to cover their intra- and interstate responsibilities and have had to scale back. The California State Fire Marshal, which oversees hazardous materials lines in the state, in 2012 decided not to renew its interstate agent agreement because of staffing concerns and budget constraints. Meanwhile, the Public Service

Commission of West Virginia was booted out of the interstate agency program after 2012 for failing to meet PHMSA's long-term standards for pipeline safety oversight.

Still, Alan Rathbun, director of pipeline safety at Washington Utilities and Transportation Commission, warned against assuming that the challenges faced by some states are obstacles faced by all interstate agents.

"If PHMSA has concerns over some of the actions of some interstate agent partners, we encourage them to try to rectify those, but don't throw the baby out with the bathwater," Rathbun said in a Sept. 2 interview at the NAPS meeting.

Washington State, the home of the Pipeline Safety Trust, has vocally opposed any move by PHMSA to curtail interstate agent authority. The state's [Citizen's Committee on Pipeline Safety](#) in May said that eliminating Washington's interstate agent agreement would negatively impact the overall effectiveness and efficiency of pipeline inspections, and the Washington UTC at the end of 2014 wrote a [letter](#) to PHMSA emphasizing the efficacy of the interstate agent system as a whole.

Agencies — such as those in Washington or Arizona — that have been serving as interstate agents for some time have already poured significant time and money into becoming qualified to do interstate oversight, Miller noted.

"We made that commitment. We've spent those funds. We send our people to training," Miller said. "Everything that a federal inspector goes through to train to do his job, my people have done the same thing. Now, why would you eliminate such a valuable resource?"

What changed?

When federal pipeline safety regulations were adopted in 1972, resources and personnel were limited. Congress created the interstate agent agreement framework to let state inspectors supplement the federal inspection force, the Maryland Public Service Commission noted in a 2014 [report](#) to its [legislature](#). PHMSA has also allowed state agencies to apply for temporary interstate agent agreements that let a state inspect specific interstate activities, such as a long-term construction project, without taking on full, long-term interstate agent responsibilities.

PHMSA's ranks have swelled over time, and the 2015 enacted federal budget gave PHMSA \$11.9 million for hiring 109 new positions, mostly inspection and enforcement personnel, bringing the workforce in the Office of Pipeline Safety to 336. The administration has said it wants its state partners to spend less time and energy on interstate pipeline issues, only entering into interstate agent agreements where PHMSA needs additional support.

With that in mind, PHMSA has rejected a few applications for interstate agent status in recent years, such as one last year from New Hampshire. In 2014, the state enacted a [law](#) that "deemed it in the best interest of the state" for the New Hampshire Public Utilities Commission to have oversight for interstate gas and hazardous liquids pipelines. However, PHMSA denied the New Hampshire PUC request for interstate agency, according to Randy Knepper, director of the commission's safety division.

Knepper, who said he would apply again this year for interstate agent status at his legislature's request, said he sees many practical benefits to localizing interstate oversight. He noted that he and his team are already familiar with the state's emergency responders, the welders who work on pipelines, and other state-specific pipeline safety considerations, and because of their proximity to the state's interstate pipeline miles, the New Hampshire PUC staff members could do inspections more frequently and could be on the scene of an accident sooner.

"It's not a big reach," Knepper said in a Sept. 2 interview at the NAPS meeting. "If it's important enough that our citizens make a point of getting a law passed, ... we shouldn't just dismiss it. ... I think it gives comfort to the local people that they can contact me versus somebody that's miles away."

For its part, PHMSA said it is focused on optimizing its teamwork with states, in whatever form that partnership works best.

"We value our collaborative relationship with our state partners and want to continue to strengthen the federal/state partnership to improve safety and reduce risk," PHMSA spokeswoman Artealia Gilliard said Sept. 3. "PHMSA is working to strengthen the federal/state pipeline safety partnership that has existed for many years and is examining opportunities to enhance the interstate agent program to improve safety and reduce risk. Moving forward, PHMSA will continue to leverage our strong partnerships with states and other stakeholders to improve the effectiveness of our interstate agent program."

Knepper, Miller and other state pipeline safety program heads said they believe that interstate agents are better positioned to earn the public's trust than federal regulators might be.

"Everyone talks about the public losing trust in regulatory oversight, and I believe that we could be one of those tools that help regain some of that trust," Miller said.

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