

## INSIGHTS

# State Participation in Interstate Pipeline Inspections: GAO Recommendations

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A recent [Report to Congress](#) mandated by the most recent amendments to the Pipeline Safety Act was released by the Government Accountability Office (GAO), reviewing federal and state responsibilities and resources for inspection of pipelines that transport product across state lines. Increases in funding have allowed the federal agency charged with regulating pipeline safety, the Pipeline and Hazardous Material Safety Administration (PHMSA or the Agency), to expand its own inspection workforce and reduce its reliance on state agents. The Report to Congress finds that the Agency has not assessed future workforce needs, however, to determine the appropriate level of state participation.

## Federal and State Partners in Pipeline Safety Oversight

There are nearly 2.8 million miles of oil and gas pipelines in the U.S. which are inspected by PHMSA and states. A large majority of these pipelines are located entirely within states (referred to as 'intrastate'). Under the federal Pipeline Safety Act, Congress established a cooperative federalism scheme whereby states can participate in the regulation of intrastate pipelines through a certification from PHMSA. All but 2 states regulate intrastate gas pipelines and 15 states regulate intrastate oil pipelines. State pipeline safety programs employ approximately [346 full-time equivalent pipeline safety inspectors](#) responsible for inspecting and enforcing federal and state pipeline safety regulations over 80 percent of intrastate transmission and distribution pipelines in the U.S.

Roughly 340,000 miles of pipelines transport product across state lines and are considered 'interstate.' These pipelines are typically larger diameter transmission pipelines operated at higher pressures. Reflecting a 25% staffing increase since 2012, PHMSA currently employs roughly 147 full time inspectors to oversee these pipelines (as well as the roughly 20% of intrastate pipelines that are not regulated by a state partner). By statute, states are expressly preempted from regulating interstate pipelines unless they are approved to conduct pipeline safety inspections as an interstate agent or through a (temporary) interstate agreement (or through a new allowance of "joint inspections" that has not been employed to date). Historically, PHMSA has used interstate agents to supplement its federal inspection resources and states may receive grants to reimburse up to 80 percent of the cost of their pipeline safety activities (whether intra or interstate). Interstate agents conduct inspections in the field, while PHMSA maintains responsibility for enforcement.

Nine states have been approved as interstate agents for gas pipelines and five of those states also participate in inspection of oil pipelines. Temporary interstate agreements allow PHMSA the flexibility to request participation in specific inspections as needed (as opposed to a state's participation in the full range of inspections); and six states have entered into temporary interstate agreements with PHMSA. As noted by GAO, since 2012 PHMSA has denied two state applications for interstate agents and another two applications were instead authorized as temporary agents.

### **Challenges in State Inspection of Interstate Pipelines**

As mentioned in the GAO Report, there are challenges in ensuring adequate state participation in the oversight of interstate pipelines. GAO's recommendation of workforce planning will not by itself resolve these obstacles. While state participation in regulating interstate pipelines can be beneficial, PHMSA must ensure adequate training of state inspectors, that federal inspection priorities are implemented, and that there is consistency in application of the regulations and in enforcement.

PHMSA establishes federal inspection priorities for interstate pipelines and interstate agents work with PHMSA regional offices on an inspection plan that is intended to reflect these priorities. Interstate agents may have greater local knowledge of facilities and their operational history that could enhance pipeline safety inspections. Based on this knowledge, interstate agents may propose additional inspections. Further, state oversight could also lead to shorter incident response time and better oversight of pipeline construction projects.

A recent trend, highlighted by the GAO Report, is a preference by the Agency to enter into temporary interstate agreements as opposed to formal interstate agent agreements. While the Agency noted to GAO that it does not intend to discontinue current interstate agent agreements, it believes that it has sufficient staff to meet its inspection needs without adding additional interstate agents. PHMSA also noted that because intrastate pipelines pose the highest safety risk to states, state pipeline safety agencies should focus their efforts on those pipelines. These comments are consistent with the Agency's 2015 guidelines for State Programs which contemplated a more limited role for states in future interstate agent arrangements (but are notably absent from the current revised [version](#)).

While state participation in inspecting interstate pipelines can lead to more thorough and targeted inspections, without adequate training and oversight from PHMSA, state inspectors may not apply the federal regulations consistently. State inspectors may not understand the application of minimum federal regulations, leading to inconsistent and uneven enforcement across PHMSA regions. While minimum federal regulations apply to both interstate and intrastate pipelines, states often attempt to impose even more stringent state regulations. The Pipeline Safety Act prohibits states from applying pipeline safety regulations that are inconsistent with the federal requirements, however, and state inspectors may not always fully understand these limitations. (See *49 U.S.C. § 60104(c)*).

PHMSA's current preference for temporary interstate agreements are questioned by GAO due to the limited scope and ad hoc nature of such arrangements. State inspectors, who are typically focused on intrastate facilities, may be unfamiliar with the interstate pipeline systems and operators and may face what one state regulator called "a steep learning curve." Another obstacle is that state pipeline safety agencies may not have sufficient inspection staff available,

when needed, to participate in ad hoc interstate inspections.

**Summary**

GAO recommends in the Report that PHMSA develop an inspection workforce plan going forward to ensure that it maintains the correct mix of federal and state resources for interstate pipelines. Workforce planning, GAO asserts, should improve PHMSA's ability to allocate sufficient resources and expertise as needed for inspecting interstate pipelines. PHMSA agreed with the recommendation and anticipates completing the plan by the end of December 2018. While not noted by GAO, a focus on training, communication, and coordination of state inspectors at the outset of any interstate agent agreement, whether formal or temporary, and throughout pipeline safety inspections will also improve consistency and regulatory certainty.

As Congress and the industry prepare for the next reauthorization of the Pipeline Safety Act, additional improvements may be necessary to ensure the consistent application of the federal regulations and even enforcement across PHMSA Regions. Operators should continue to monitor these and other potential changes in the federal-state oversight of pipeline safety and encourage consistency in the interpretation and application of safety rules.