

INSIGHTS

## Insights to PHMSA Enforcement and Rulemaking under the Trump Administration

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Since the Trump Administration took office, oil and gas industry stakeholders have questioned whether pending PHMSA rulemakings will move forward, whether the rate of PHMSA enforcement will continue, and whether agency priorities will change. The API conference held in San Antonio last week provided a rare opportunity in recent months for the industry to hear from key PHMSA personnel and industry practitioners on the status of agency priorities, rulemakings, enforcement and leadership vacancies. As explained below, while the Agency currently lacks key leadership positions and is analyzing executive directives on rulemaking, it intends to move forward with proposed rules and continue enforcement.

### Organizational Updates/Changes

While the Agency lacks four key leadership positions which require Congressional approval (i.e., Administrator, Deputy Administrator, Chief Counsel, and Director for Governmental, Internal and Public Affairs), Alan Mayberry Associate Administrator for Pipeline Safety indicated that he was hopeful that the administration's choice for PHMSA Administrator would be identified soon. We understand that various candidates have been floated by the administration, including a retired executive who worked in the railroad industry, Skip Elliott. As to Field Operations, the Agency recently made some personnel moves to fill positions which remain unfilled in light of the Agency's hiring freeze. Those include the following changes: (1) Wayne Lemoi will be the National Drug & Alcohol Coordinator (previously the National Safety Coordinator); (2) Rod Seeley will be the National Safety Coordinator (previously the Southwest Region Director); and (3) Chris Hoidal will be the Senior Technical Advisor for Program Development. Frank Causey and Dustin Hubbard will be serving as Interim Directors for the Southwest and Western Region respectively and PHMSA will undertake a 120 day rotation plan of Directors until the positions are filled, noting that it will provide some fresh ideas to the Regions and promote consistency across Regions.

### Rulemaking

PHMSA acknowledged that in 2016, it had the biggest rulemaking agenda since the enactment of Parts 195 and 192 in 1970. Those rulemakings are moving more slowly than the Agency would like, as it continues to evaluate and analyze the current Administration's Executive Directives related to rulemaking. PHMSA is developing a revised regulatory agenda to comply with the ["2 for 1" Executive Order](#), noting that they expect the directive is by department not mode (i.e., directed to the Department of Transportation not each individual modal agency

within DOT). Mayberry observed that while there is not a lot of fat to trim under PHMSA rules, there may be some enhancements that would make PHMSA rules more efficient. He also emphasized that the Secretary of Transportation is focused on data and statistics, including economic analyses, and that these factors are likely to be considered in future rulemakings.

As to the 3 [lawsuits](#) regarding the Agency's underground natural gas storage rules, the Agency will be responding in short order explaining that it was not the Agency's intent to overstep its authority as it relates to state jurisdiction of some underground natural gas storage facilities. PHMSA is still looking to finalize the liquid rule [link] before the end of this year, but it is unclear whether in light of recent Executive Orders that rule will be significantly changed from the prepublication version that was released during the last days of the Obama administration. The Agency advised industry to "wait and see" the content of the rule that is officially published.

The [gas mega rule](#), proposed in April 2016, is currently proceeding through the Technical Advisory Committee review and consultation process, with the next meeting scheduled for June and a third meeting to be held in September on the gathering line proposal. Finally, the Agency is reviewing and addressing some aspects of its emergency order interim final rules and will issue a permanent, likely revised, rule as soon as possible.

#### Enforcement/Priorities

Agency enforcement and increased use of current penalty maximums are expected to continue under the current administration. Mayberry noted, "I know we carry a two by four and we intend to use it." In terms of areas of focused enforcement, PHMSA signaled that recent incidents were caused by lapses in integrity management programs. Further, operators looking at recordkeeping were advised "to make sure you don't take your foot off the gas and ensure that you know your system." Control room management issues were also cited for contributing to the severity of 77% of accidents. Although not legally required, PHMSA indicated that the Agency's focus on SMS is not something that will go away with the change of White house administration.

With regard to integrated inspections, the Agency signaled that it may look to streamlining or "lightening them up" in certain respects in order to make the time spent on audits more efficient for both the industry and the agency. That said, PHMSA does not expect that the audit schedule or pace will decrease going forward. PHMSA hired over 100 new people in 2016, including additional inspectors and doubling the number of Agency "attorney advisers."

Industry practitioner Catherine Little noted that a lot of those new PHMSA inspectors and lawyers lack experience and are perhaps not as prepared in conducting inspections and enforcement proceedings. She pointed to issues with consistency across PHMSA regions, noting that hopefully as new hires gain more experience, regulatory interpretations and enforcement will be more consistent.