



Dates of Interest

October 2016

20-21 [Pipeline Safety Trust Conference](#), New Orleans, LA

November 2016

8-10 [APGA Operations Conference](#), Chattanooga, TN

9 [API & AOPL Pipeline Safety Management Systems Webinar](#)

13-16 [NARUC Annual Meeting](#), La Quinta, CA

16-17 [PHMSA Pipeline Safety Research & Development Forum](#), Cleveland, OH

16 [API/AFPM Fall Operating Practices Symposium](#), New Orleans, LA

December 2016

13 Comments due on PHMSA's [Emergency Order Interim Final Rule](#)



**Know what's below.
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Pipeline Safety Update

ISSUE NO. 116 – OCTOBER 19, 2016

[Susan Olenchuk](#), [Bryn Karaus](#), and [Barbara Deathe](#)

PHMSA publishes final rule expanding installation of excess flow valves. Interagency Task Force releases final report and recommendations on underground natural gas storage. PHMSA Rulemakings Update. PHMSA publishes civil penalty framework and policy statement. PHMSA publishes interim final rule implementing new emergency order authority. DOT Inspector General releases audit report on PHMSA's implementation of mandates and recommendations. Select updates from states. Updates from Canada.

PHMSA Publishes Final Rule Expanding Installation of Excess Flow Valves

On October 14, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published its [final rule](#) expanding the requirement to install either excess flow valves (EFVs) or manual service line shut-off valves (e.g. curb valves) on new or replaced service lines. The final rule requires that operators:

- Install EFVs on new or replaced branched service lines servicing single family residences, multifamily residences and small commercial entities consuming gas volumes not exceeding 1,000 standard cubic feet per hour (SCGH). An EFV is not required if (1) the service line does not operate at a pressure of at least 10 psig throughout the year; (2) the operator has experienced gas stream contaminants that could interfere with the EFV's operation or impede customer service; (3) an EFV could interfere with necessary operation or maintenance activities; or (4) an EFV meeting performance standards is not commercially available.
- Use either manual service line shut-off valves (curb valves) or EFVs for new or replaced service lines with meter capacities exceeding 1,000 SCFH. Over the objections of some commenters, the final rule requires that curb valves be accessible to qualified and authorized first responders during emergencies.
- Notify customers of their right to request installation of an EFV on existing service lines. The operator's rate-setter will determine who is responsible for installation costs.

The rule will become effective on April 14, 2017. Additional information regarding PHMSA's final rule is available on [Regulations.gov](#).

Interagency Task Force Releases Final Report and Recommendations on Underground Natural Gas Storage.

On October 14, the federal Interagency Task Force released its [final report](#) and [fact sheet](#) on underground natural gas storage. The Task Force, created following the natural gas leak at the Aliso Canyon Storage Facility in California, was co-chaired by the Department of Energy and PHMSA, and included members from numerous federal, state, and local government agencies. The report includes 44 recommendations in three areas of study: well integrity, public health and environmental effects, and energy reliability. PHMSA has [indicated](#) that, in the coming months, it intends to issue interim safety regulations for underground natural gas storage facilities that incorporate American Petroleum Institute Recommended Practices 1170 and 1171. PHMSA also intends to undertake a phased rulemaking process and provide industry guidance that will be informed by the Task Force report.

State-Specific Association Meetings

October 2016

- 25-26 [Kansas Pipeline Safety Seminar](#), Salina, KS
- 25-27 [Virginia State Corporation Commission Pipeline Safety Conference](#), Virginia Beach, VA

November 2016

- 2-4 [Mississippi Damage Prevention Summit](#), Tunica, MS
- 28-12/1 [Alabama Natural Gas Association Pipeline Safety Meeting & Board Meeting](#), Montgomery, AL

December 2016

- 7-8 [Missouri CGA Damage Prevention & Excavation Safety Summit](#), Springfield, MO

Regulations and Code Compliance: Upcoming PHMSA State Seminars

PHMSA offers training on gas and hazardous liquid pipeline safety regulations.

More information is available [here](#).

October 2016

- 24-28 New Jersey (Gas)

PHMSA Rulemakings Update. The tables below summarize the status of PHMSA’s rulemakings as reported in the Department of Transportation’s (DOT) [October Significant Rulemaking Report](#) and by OMB’s Office of Information and Regulatory Affairs (OIRA) in the Spring 2016 [Unified Regulatory Agenda](#). Revised dates appear in **bold**.

Pending Final Rules

Proceeding	DOT Estimated Submission to OMB*	DOT Estimated Publication	OIRA Estimated Publication
Expanding the Use of Excess Flow Valves in Gas Distribution Systems to Applications Other than Single-Family Residences	Published on October 14, 2016		
Plastic Pipe Rule	Not listed by DOT	Not listed by DOT	October 2016
Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Proposed Changes	Not listed by DOT	Not listed by DOT	October 2016
Safety of Gas Transmission and Gathering Pipelines	No Estimate Available	No Estimate Available	No Estimate Available
Safety of Hazardous Liquid Pipelines	October 19, 2016	December 30, 2016	October 2016
Underground Storage Facilities (interim final rule)	November 2, 2016	February 14, 2017	August 2016

Pending Notices of Proposed Rulemaking

Proceeding	DOT Estimated Submission to OMB*	DOT Estimated Publication	OIRA Estimated Publication
Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments	Not listed by DOT	Not listed by DOT	July 2016
State Pipeline Safety Program Certification	Not listed by DOT	Not listed by DOT	August 2016
Valve Installation and Minimum Rupture Detection Standards	January 24, 2017	May 3, 2017	September 2016

*Under Executive Order (EO) 12866, OMB reviews proposed significant rules to ensure they are consistent with applicable law, the President’s priorities, and the principles set forth in the EO, and to ensure the proposals do not conflict with another agency’s policies or actions. OMB also analyzes the cost-benefit analyses in support of the proposals. While the EO sets out deadlines for OMB evaluation, review periods are often extended.

Recent Van Ness Feldman Publications

[Obama Administration Seeks Tribal Input on Federal Infrastructure Decisions, Dakota Access Litigation Continues](#) – September 29, 2016

[Federal Intervention in Dakota Access Pipeline Project Focuses on Tribal Consultation Process](#) – September 13, 2016

[BSEE Director Urges Action on Offshore Well Cementing Safety Issues](#) – August 30, 2016

[BSEE Looks to Address Offshore Safety Component Failures at Upcoming Forum](#) – August 22, 2016

[Proposed BSEE Rule Continues Interior Department Focus on Decommissioning Costs and Obligations](#) – August 17, 2016

[Use of Drones for Monitoring and Inspection of Energy Infrastructure](#) – August 17, 2016

[Little-Noticed Provision in BSEE's Well Control Rule May Have a Major Impact on Risk Reduction](#) – August 8, 2016

OTHER PHMSA UPDATES

PHMSA publishes civil penalty framework and policy statement. On October 17, PHMSA [published](#) its civil penalty framework and policy statement, previously released on October 11. The civil penalty framework also is [posted](#) on PHMSA's website.

PHMSA publishes interim final rule implementing new emergency order authority. On October 14, PHMSA's [interim final rule](#) establishing temporary regulations to implement the new emergency order authority granted under the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (PIPES Act) was published in the Federal Register. Comments are due December 13, 2016.

DOT Inspector General releases audit report regarding PHMSA's implementation of mandates and recommendations. On October 14, the DOT Office of the Inspector General (OIG) released an Audit Report of PHMSA's pipeline and hazardous materials safety programs entitled *Insufficient Guidance, Oversight, and Coordination Hinder PHMSA's Full Implementation of Mandates and Recommendations*. The report assesses PHMSA's progress in addressing congressional mandates and recommendations of the National Transportation Safety Board, the Government Accountability Office, and OIG with respect to PHMSA's pipeline safety and hazardous materials safety programs. OIG concludes that a lack of sufficient processes, project management and oversight has impeded PHMSA's ability to meet deadlines, but that the agency is implementing organizational changes to improve its ability to address mandates and recommendations. OIG also found that PHMSA has not adequately coordinated with other DOT Operating Administrations on rulemaking and international standards development with respect to the transportation of hazardous materials. The report makes several recommendations to PHMSA to improve its implementation of mandates and recommendations.

Van Ness Feldman has prepared an overview of the [Protecting Our Infrastructure of Pipelines and Enhancing Safety \(PIPES\) Act of 2016](#), and a redline showing how the PIPES Act modified the legislative text of the pipeline safety laws. For copies, contact Susan Olenchuk at SAM@vnf.com, Bryn Karaus at BSK@vnf.com, or Tyson Kade at TCK@vnf.com.

SELECT UPDATES FROM STATES

PENNSYLVANIA

[SB 1235](#) (Baker) and [HB 2308](#) (Godshall). The Pennsylvania General Assembly is currently considering two bills that would extend the state's Underground Utility Line Protection Act, which is currently set to expire at the end of 2016. HB 2308 would extend the expiration until the end of 2017, and would make no other changes to the Act. SB 1235 would extend the expiration until 2021, transfer enforcement authority from the Department of Labor to the Pennsylvania Public Utility Commission, and remove existing exemptions related to municipalities, the Pennsylvania Department of Transportation, the extraction of natural resources and certain gathering lines. SB 1235 would provide for mapping of abandoned lines and facilities, establish a damage prevention committee, place additional duties on facility owners, excavators and project owners, and provide for assessments, fees and penalties.

SB 1235 has been passed by the Senate. Both bills are currently under consideration by the House.

WASHINGTON

[Oil Spill Contingency Plan Rulemaking](#). The Department of Ecology adopted [amendments](#) to its Oil Spill Contingency Plan Rule. The changes are intended to ensure that required oil spill response equipment is appropriate for the pipeline risks and operating environments for both marine and inland areas, to enhance air monitoring and spills to ground requirements, and to clarify language and ensure consistency with federal regulations. The amendments become effective November 12, 2016.

UPDATES FROM CANADA

On September 29, Canada's National Energy Board (NEB) published proposed "[Pipeline Financial Requirements Regulations](#)" that would impose "no-fault" absolute liability of \$1 billion on companies operating federally regulated major oil pipelines following an unintended or uncontrolled pipeline release. The proposed regulations would implement the requirements of Canada's [Pipeline Safety Act](#) passed by Parliament on June 19, 2016, which established an absolute liability of \$1 billion for companies operating oil pipelines transporting 250,000 or more barrels per day and provided that the NEB establish classes of other pipelines and corresponding liability limits for them. The no-fault liability regime is intended to ensure a prompt response to uncontrolled or unintended releases in advance of determining fault and to protect the public from costs and damages. Consistent with the Act, the proposed regulations would establish other classes of pipelines transporting oil, gas and other commodities with proposed corresponding liability limits. The proposed regulations also address requirements for maintaining financial resources to match the limit of absolute liability. Comments are due 30 days from publication of the proposed regulations.

FOR MORE INFORMATION

Van Ness Feldman counsels clients on pipeline safety compliance, enforcement, and litigation under the Pipeline Safety Laws and Regulations and related statutes. If you are interested in additional information regarding pipeline safety matters or any PHMSA or pipeline related matter, please contact [Susan Olenchuk](#) at (202) 298-1896 or sam@vnf.com, [Bryn Karaus](#) at (202) 298-1821 or bsk@vnf.com, or any member of the firm's [Pipeline & LNG](#) practice group.

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