



Dates of Interest

January 2018

- 2 Comments due re [Texas proposed damage prevention regulations](#)
- 8 Comments due on [PHMSA's Underground Natural Gas Storage Facility User Fee](#)
- 8-9 [Public Hearing on proposed regulations re flow lines](#), Denver, CO
- 16 Responses due from utilities re [Iowa's inquiry regarding best practices for One Call program](#)
- 16-18 [AGA Best Practices Kick-Off Meeting](#), San Diego, CA
- 23 Responses due from public re [Iowa's inquiry regarding best practices for One Call program](#)
- 23-25 [API/AGA Joint Committee on Pipeline Welding Practices](#), San Antonio, TX
- 30-2/1 [AGA Management Systems Workshop](#), San Diego, CA



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Pipeline Safety Update

ISSUE NO. 132 – DECEMBER 19, 2017

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PHMSA's technical advisory committees convene meetings. PHMSA Rulemakings Update. PHMSA raises annual random drug testing rate. PHMSA seeks comments on proposed rate structure for underground natural gas storage user fees. Federal court denies National Wildlife Federation's Clean Water Act challenge. Select Updates from States.

PHMSA's Technical Advisory Committees Convene Meetings

On December 13, the Pipeline and Hazardous Materials Safety Administration (PHMSA) Gas Pipeline Advisory Committee (GPAC) and Hazardous Liquid Pipeline Advisory Committee (LPAC) held a joint meeting to discuss a variety of pipeline safety program and policy issues. The GPAC and the LPAC are peer review committees established under the Pipeline Safety Laws that advise PHMSA on proposed safety standards and make recommendations regarding their "technical feasibility, reasonableness, cost-effectiveness, and practicability." PHMSA Administrator Howard "Skip" Elliott emphasized the agency's goal of zero pipeline incidents and the importance of technology, research, and development to obtaining that goal. He also made clear that, while the new Administration is working to simplify regulations and make them less onerous, operators should voluntarily pursue safety performance beyond the minimum standards.

PHMSA staff provided updates on the status of regulatory initiatives, explaining that statutory mandates and executive orders dominate PHMSA's regulatory agenda. PHMSA is aggressively implementing regulatory reform initiatives to identify and remove outdated or overly burdensome regulations. With respect to specific pending regulatory initiatives, PHMSA hopes to issue final rules addressing plastic pipe, hazardous liquid pipelines, and emergency order authority in the coming months. PHMSA intends to issue a final rule on underground natural gas storage by summer. PHMSA Staff also provided updates on the Voluntary Information Sharing Working Group, safety management systems, enforcement data, excavation damage enforcement, and PHMSA's pipeline inspection program.

PHMSA also shared the results of an Oak Ridge National Laboratory study analyzing whether the 2015 edition of the ASME Boiler Pressure and Vessel Code (BPVC) provides equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety as the 1992 edition. Older versions of the ASME BPVC are incorporated by reference into Part 192 and the NFPA 59A (2001) standard, which in turn is incorporated by reference into Part 193. Inconsistencies between the regulations and current editions have created compliance uncertainties. The Oak Ridge study concluded that the 2015 BPVC provides an equivalent level of safety as the 1992 version, and that the design and construction of boilers and pressure vessels in accordance with the 1992 BPVC is no longer possible.

On December 14 and 15, the GPAC convened the third of at least five meetings to discuss PHMSA's [notice of proposed rulemaking](#) that would extensively modify Part 192 of the federal gas pipeline safety regulations applicable to transmission and gathering pipelines. The GPAC considered and extensively discussed proposals regarding material documentation and integrity verification. Future GPAC meetings to discuss the proposed rule are scheduled for March 26-28, 2018 and June 12-14, 2018. Proposed provisions that would apply to gas gathering lines are expected to be discussed at the June meeting. Information from the meetings is [here](#).

Recent Van Ness Feldman Publications

[EPA Proposes to Amend Effective Date of WOTUS Rule](#) – November 27, 2017

[FERC Revises License Term Policy for Hydropower Projects](#) – October 19, 2017

[This Time it Could Happen: Comprehensive Tax Reform...](#) - October 11, 2017

[Congress Takes Another Step Forward to Promote Automated Vehicle Technology Deployment - Senate Committee Advances Legislation to Support the Development of Highly Automated Vehicles](#) – October 5, 2017

[DOE Sends Market-Reshaping Grid Resiliency Proposal to FERC](#) – October 3, 2017

PHMSA Rulemakings Update. The tables below summarize the status of pipeline safety rulemakings pending before PHMSA, as reflected in the Department of Transportation’s (DOT) October [Significant Rulemaking Report](#) and the Unified Regulatory Agenda, released by the Office of Management & Budget’s (OMB) Office of Information and Regulatory Affairs (OIRA). The Unified Regulatory Agenda appears in two principal parts: [Current Agenda Agency Regulatory Entries for Active Actions](#) and [Current Long Term Actions](#).

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.

Pending Final Rules

Proceeding	DOT Estimated Submission to OMB	DOT Estimated Publication	OIRA Estimated Publication
Enhanced Emergency Order Procedures	Not Listed	Not Listed	January 2018
Plastic Pipe Rule	December 4, 2017	March 15, 2018	August 2018
Safety of Gas Transmission and Gathering Pipelines	May 10, 2018	August 22, 2018	August 2018
Safety of Hazardous Liquid Pipelines	January 24, 2018	April 27, 2018	April 2018
Underground Natural Gas Storage Facilities	Not Listed	Not Listed	January 2018

Pending Notices of Proposed Rulemaking

Proceeding	DOT Estimated Submission to OMB	DOT Estimated Publication	OIRA Estimated Publication
Class Location Requirements	December 26, 2017	April 9, 2018	Not Listed
Standards Update Rule – 2015 and Beyond	Not Listed	Not Listed	June 2018
Valve Installation and Minimum Rupture Detection Standards	Not Listed	Not Listed	April 2018

OTHER PHMSA UPDATES

PHMSA raises annual random drug testing rate. On December 8, PHMSA issued a [notice](#) raising the minimum random drug testing rate for 2018 to 50 percent of all covered employees. The minimum random drug testing rate in 2017 was 25 percent. A provision in the regulations requires the PHMSA Administrator to raise the minimum annual drug testing rate to 50 percent when the data obtained from

**State-Specific Association
Meetings**

February 2018

27-3/1 [Texas Damage Prevention Summit](#), San Marcos, TX

28-3/1 [Louisiana Mid-Continent Oil & Gas Association Annual Meeting](#), New Orleans, LA

the Management Information System (MIS) reports indicates a positive rate of drug use equal to or greater than 1 percent. Because the positive rate in 2016 was greater than 1 percent, PHMSA is raising the drug testing rate. Additionally, PHMSA will now be providing usernames and passwords through the [PHMSA Portal](#) rather than mailing the usernames and passwords.

PHMSA seeks comments on proposed rate structure for underground natural gas storage user fees. On December 8, PHMSA issued a [notice](#) proposing and seeking comments on a user fee rate structure for underground natural gas storage facilities for calendar years 2018 and 2019. The notice proposes to use the number of wells reported in 2017 annual reports, which are due March 15, 2018, to develop the user fee rate structure for fiscal years 2018 and 2019. Comments are due January 8, 2018.

LITIGATION UPDATE

Federal court denies National Wildlife Federation's Clean Water Act challenge. On December 12, the U.S. District Court for the Eastern District of Michigan Southern Division issued an [opinion and order](#) finding that the National Wildlife Federation (NWF) lacks standing to pursue claims that PHMSA failed to review spill response plans for interconnected oil pipelines that cross both land and navigable waters in violation of the Federal Water Pollution Control Act.

SELECT UPDATES FROM STATES

COLORADO

On November 29, the Oil and Gas Conservation Commission (OGCC) issued an [Amended Notice of Rulemaking Hearing](#) to consider additions and amendments to its Rules of Practice and Procedure as part of its previously announced "[Flowline Rulemaking](#)," issued on October 15. The Flowline Rulemaking is meant to strengthen regulations applicable to flowlines and to improve uniformity of operator participation in the one-call program. A public hearing will be held on January 8-9, 2018.

IOWA

On December 7, the Iowa Utilities Board (IUB) issued an [Order Opening Inquiry](#) to gather information from utilities, stakeholders and the public regarding best practices for increasing the effectiveness of the one-call program regarding locating and digging near underground utilities. The IUB initiated the investigation pursuant to a grant received from PHMSA to support education and enforcement programs for locating and excavating near natural gas pipelines. Responses from utilities with underground facilities are due January 16, 2018. Responses from the general public are due January 23, 2018. A workshop to discuss the comments is scheduled for February 27, 2018.

MONTANA

On December 8, the Department of Public Service Regulation issued a [Notice of Proposed Amendment](#) that would adopt the federal pipeline safety regulations codified in Parts 191, 192, and 193 of PHMSA's pipeline safety regulations effective as of October 30, 2017. The regulations currently adopt the pipeline safety regulations as of October 30, 2016. Comments are due January 8, 2018.

UTAH

On November 15, the Public Service Commission issued a [Notice of Proposed Rule](#) that would adopt the federal pipeline safety regulations codified in Parts 190, 191, 192, 198, and 199 of PHMSA's pipeline safety regulations effective as of September 1, 2017. The regulations currently adopt the pipeline safety regulations as of September 1, 2015. Comments are due January 2, 2018.

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](#)

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