



Dates of Interest

November 2015

- 16-17 [AGA Executive Leadership Safety Summit](#), Washington, DC
- 18 [API Fall Operating Practices Symposium](#), Long Beach, CA
- 18 [PHMSA National Pipeline Mapping System Operator Technical Conference](#), Arlington, VA
- 19-20 Pipeline Safety Trust [Annual Conference](#), New Orleans
- 25 Comments due on PHMSA [Information Collection Request](#) for NPMS

December 2015

- 4 Comments due on PHMSA [Information Collection Request](#)
- 8-9 [Florida Damage Prevention Summit](#), Orlando, FL



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Pipeline Safety Update

ISSUE NO. 103 – NOVEMBER 10, 2015

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PHMSA addresses petitions to reconsider Miscellaneous Rule. API Recommended Practice on Pipeline Safety Management Systems exceeds NTSB recommendation. PHMSA rulemakings update. PHMSA extends deadline for commenting on NPMS information collection and announces technical workshop. PHMSA issues TAG grants. PHMSA awards research grants to universities. PHMSA issues corrected gas distribution annual report instructions. CRS releases report on pipeline safety progress. GAO provides update on PHMSA's progress in addressing recommendations. National Wildlife Federation files lawsuit against DOT. PG&E requests dismissal of federal criminal indictment related to San Bruno. Texas Congressman introduces bill to shift hiring authority from OPM to PHMSA. Select updates from states.

PHMSA Addresses Petitions to Reconsider Miscellaneous Rule

On September 30, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a decision on several petitions for reconsideration of its March 2015 [Miscellaneous Rule](#). The petitions addressed PHMSA's amendments to the construction inspection requirements in section 192.305 and the requirements for components fabricated by welding. Other amended regulations adopted in the Miscellaneous Rule became effective October 1.

- *New Regulation for Post-Construction Inspections Delayed:* In its decision on reconsideration, PHMSA delayed indefinitely the effectiveness of the amendment to section 192.305. That amendment would have prohibited a pipeline operator from using its own personnel to perform a required construction inspection if the same personnel performed the task requiring that inspection. PHMSA said that agency will evaluate how operators are complying with the existing regulation, develop guidance, and host workshops before determining if amendments to current regulations are warranted.
- *Reconsideration Denied, But Stay Granted, for Amendments to Requirements for Components Fabricated by Welding.* In its decision on reconsideration, PHMSA denied petitions filed by the Interstate Natural Gas Association of America (INGAA) and American Gas Association (AGA) challenging the amendments to requirements for components fabricated by welding in sections 192.153 and 192.165(b)(3). The amendments require pressure vessels constructed under the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPVC) ASME and subject to strength testing requirements be tested to at least 1.5 times maximum allowable operating pressure. However, on October 27, PHMSA issued a separate letter to INGAA granting its request to stay enforcement of the new regulations for certain existing pressure vessels. Specifically, PHMSA agreed not to enforce alleged violations of sections 192.153(e) and 192.505(b) for pressure vessels covered by sections 192.153(a)-(b) and 192.165(b)(3) that were put into service between July 14, 2004, and October 1, 2015. The stay of enforcement will remain in effect until further notice, subject to PHMSA's right to revoke the stay and pursue an enforcement action upon determining that a significant safety issue warrants doing so.

**Regulations and Code Compliance:
Upcoming PHMSA State Seminars**

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

More information is available [here](#).

November 2015

11/30-12/4 Alabama (gas & liquids)

**State-Specific Association
Meetings**

December 2015

1-3 [Alabama Natural Gas Ass'n Pipeline Safety Seminar](#), Montgomery, AL

API Recommended Practice on Pipeline Safety Management Systems Exceeds NTSB Recommendation

On October 30, the National Transportation Safety Board (NTSB) [stated](#) that American Petroleum Institute's (API) recently completed Recommended Practice 1173, Pipeline Safety Management Systems (API RP 1173) exceeds the NTSB's recommendation to develop a pipeline-specific standard for safety management systems (SMS). The NTSB issued a recommendation to address pipeline SMS following the July 2010 crude oil pipeline rupture in Marshall, Michigan.

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 2015 [Unified Regulatory Agenda](#). Revisions appear in **bold**. On October 13, PHMSA issued a notice of proposed rulemaking (NPRM) proposing changes to the agency's hazardous liquid pipeline safety regulations. Additional information can be found in the NPRM [docket](#) and Van Ness Feldman's [October 6 Alert](#).

Pending Notices of Proposed Rulemaking

Rulemaking	Submitted to OMB*	DOT Estimated Publication Date	OIRA Estimated Publication Date*
Safety of Gas Transmission Pipelines	April 27, 2015	November 12, 2015	August 2015
Valve Installation and Minimum Rupture Detection Standards	December 4, 2015 (estimated)	March 16, 2016	September 2015

Pending Final Rules

Rulemaking	Estimated Submission to OMB*	DOT Estimated Publication Date	OIRA Estimated Publication Date*
Expanding the Use of Excess Flow Valves in Gas Distribution Systems to Applications Other than Single-Family Residences	September 30, 2016	January 17, 2017	N/A

*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.

Recently Published Rulemakings

Rulemaking	Date Published	Comment Date
NPRM: Safety of On-Shore Hazardous Liquid Pipelines	October 13, 2015	January 8, 2016
NPRM: Plastic Pipe Rule	May 21, 2015	July 31, 2015

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Additional Van Ness Feldman Publications

[Electric Reliability Update – November 6, 2015](#)

[Hydro Newsletter – Vol. 2, Issue 11 – October 30, 2015](#)

[Northwest Land Matters Update – October 2015](#)

NPRM: Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Proposed Changes	July 10, 2015	September 8, 2015
NPRM: Expanding the Use of Excess Flow Valves in Gas Distribution Systems to Applications Other than Single-Family Residences	July 15, 2015	September 14, 2015
Final Rule: Pipeline Damage Prevention Programs	July 23, 2015	N/A

Other PHMSA Updates

PHMSA extends deadline for commenting on NPMS information collection and announces technical workshop.

On October 26, PHMSA issued a [notice](#) extending to November 25 the deadline for commenting on a proposed information collection request (ICR) relating to the National Pipeline Mapping System (NPMS). PHMSA also announced that it will convene a workshop on November 18 to discuss technical submission issues. Additional information is [here](#); the workshop will not be webcast.

PHMSA seeks comments on the renewal of information collection requests. On October 5, PHMSA issued a [notice](#) requesting comments on proposed three-year renewals of several ICRs that expire in 2016.

PHMSA is proposing to renew, without change, ICRs relating to records for gas transmission and distribution integrity management and control room management. PHMSA is also proposing to renew an existing ICR relating to response plans for onshore oil pipelines, revised to increase the number of expected respondents. Comments are due December 4.

PHMSA issues TAG grants. On September 30, PHMSA [announced](#) more than \$1.4 million in Technical Assistance Grants (TAG) to 22 local governments and pipeline safety groups for the purpose of helping communities and non-profit organizations develop customized pipeline safety and education programs.

PHMSA awards research grants to universities. On September 30, PHMSA [announced](#) that the agency awarded almost \$2 million to 11 universities as part of its Competitive Academic Agreement Program (CAAP), which funds research regarding new ideas and technologies to improve pipeline safety.

PHMSA issues corrected gas distribution annual report instructions. On September 24, PHMSA issued [corrected gas distribution annual report instructions](#) to address conflicting instructions for reporting leaks caused by damage. The corrected instructions clarify that leaks caused by damage during construction should be reported under "Pipe, Weld, and Joint Failure." The corrections are pending approval by OMB.

Updates from Other Federal Agencies

CRS releases report on pipeline safety progress. On September 22, the Congressional Research Service (CRS) released a [report](#) entitled "DOT's Federal Pipeline Safety Program: Background and Key Issues for Congress." The report observes that, although government and industry have taken steps to improve safety during the last decade, recent incidents demonstrate a need for more improvement. The report concludes that issues that may warrant Congress's attention include the adequacy of PHMSA's resources, the effectiveness of its enforcement activities, and the practical impacts of changes to pipeline safety regulations, as well as how various stakeholders work together to protect the public and the environment.

GAO provides update on PHMSA's progress in addressing recommendations. On September 29, the Government Accountability Office (GAO) released a [report](#) entitled "Pipeline Safety: Department of Transportation Needs to Complete Regulatory Data, and Guidance Efforts," addressing PHMSA's progress in responding to prior GAO recommendations relating to gathering pipelines, operator incident response times, and the 7-year gas integrity assessment intervals. The report stated that PHMSA is planning to (1) extend certain safety requirements to previously unregulated gas gathering pipelines with a diameter greater than 8 inches; (2) address automated valves and develop a more specific

Federal Funding Resource Center

Van Ness Feldman continually identifies and provides updates on federal funding opportunities related to energy, environment, natural resources, and public lands, including PHMSA grants.

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performance-based standard for incident response times in a future rulemaking; and (3) complete research by March 2016 on extending risk-based integrity reassessment intervals beyond 7 years for gas transmission pipelines.

Litigation Updates

National Wildlife Federation files lawsuit against DOT. On October 8, the National Wildlife Federation (NWF) filed a [complaint](#) for injunctive and declaratory relief against DOT in the United States District Court for the Eastern District of Michigan. The complaint asked the court to compel DOT to take action under section 311 of the Clean Water Act (enacted as part of the Oil Pollution Act of 1990) and a related presidential executive order. The complaint requests a declaratory judgment that DOT has a nondiscretionary duty to issue regulations requiring that owners or operators of offshore oil pipelines located landward of the coast line comply with spill response plans and that DOT has failed to do. NWF also requests an injunction compelling DOT to carry out its nondiscretionary duties.

PG&E requests dismissal of federal criminal indictment related to San Bruno. In September, Pacific Gas & Electric Company (PG&E) filed five motions requesting dismissal of the criminal indictment filed in July 2014 alleging multiple violations of the Pipeline Safety Laws relating to the 2010 gas pipeline explosion in San Bruno, California. The motions to dismiss asserted arguments relating to [federalism](#), [multiplicity](#), [obstruction](#), [jury instructions](#), and the [Alternative Fines Act](#).

Updates from Capitol Hill

Texas Congressman introduces bill to shift hiring authority from OPM to PHMSA. On October 23, Congressman Gene Green (D-TEX) introduced a [bill](#) to allow PHMSA to bypass the Office of Personnel Management (OPM)'s hiring process by giving the agency "direct hire authority" for new employees. Congress provided PHMSA with funding for 109 new positions in fiscal year 2015, but as of August 2015 the agency had only filled about one-half of those positions.

Select Updates from States

Michigan: *The Public Service Commission (PSC) opened an [inquiry](#) regarding gas service lines directly connected to storage fields, transmission or gathering pipelines, wells, or processing facilities.* The PSC is concerned that such lines present a number of safety risks and has directed operators to provide information regarding the number of such connections, the type of interconnection, the source of gas for each connection, and the safety equipment installed at each connection. Responses are due December 1, 2015.

Pennsylvania: *Proposed Senate bill would require regulation of rural natural gas and hazardous liquid pipelines.* On October 26, 2015, Senator Lisa Baker introduced the Rural Pennsylvania Pipeline Safety Act, [Senate Bill No. 1044](#) (SB 1044), in the Pennsylvania General Assembly. If enacted, SB 1044 would provide the Pennsylvania Public Utility Commission (PAPUC) with the authority to regulate certain "rural pipeline operators." Among the powers granted to PAPUC is the authority to issue regulations requiring rural pipeline operators to install pipeline markers and mark pipelines and pipeline facilities; report incidents involving pipelines and pipeline facilities; comply with minimum construction and maintenance standards; require recordkeeping, GPS locating and GIS mapping; conduct leak surveys and implement damage protection and public education programs; provide PAPUC with advance notice of new pipelines; and require membership in the Pennsylvania One Call system.

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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