



Dates of Interest

September 2016

26-30 [NAPSR National Meeting](#), Indianapolis, IN

October 2016

4-6 [Risk Modeling Working Group Meeting](#), Houston, TX

10-13 [API Tank, Valves and Piping Conference](#), Las Vegas, NV

11-14 [SGA Pipeline Design Workshop](#), Charlotte, NC

19 [Applications](#) due for PHMSA One-Call Grants

19-21 [AGA Gas Utility Best Practices Technical Training and OO Roundtable](#), Henderson, NV

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

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



**Know what's below.
Call before you dig.**

Pipeline Safety Update

ISSUE NO. 113 – SEPTEMBER 21, 2016

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PHMSA's Rulemakings Update. PHMSA schedules Pipeline Safety R & D Forum. PHMSA is accepting applications for One-Call Grants. FWS issues draft guidance for ESA compensatory mitigation. ExxonMobil agrees to pay \$12 million in damages for Silvertip pipeline rupture. Select Updates from states

PHMSA Rulemakings Update. The tables below summarize the status of PHMSA's rulemakings as reported in the Department of Transportation's (DOT) [September 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 | September 21, 2016 | October 31, 2016 | January 2017 |
| Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Proposed Changes | Not listed by DOT | Not listed by DOT | October 2016 |
| Plastic Pipe Rule | 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 13, 2016 | January 23, 2017 | October 2016 |
| Underground Storage Facilities (interim final rule) | October 12, 2016 | January 23, 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-Specific Association Meetings

September 2016

26-28 [Michigan Pipeline Safety Conference](#), Mt. Pleasant, MI

October 2016

2-3 [New Mexico Oil & Gas Association Annual Meeting](#), Santa Fe, NM

4-6 [Alabama Damage Prevention Summit](#), Montgomery, AL

25-27 [Virginia State Corporation Commission Pipeline Safety Conference](#), Virginia Beach, VA

November 2016

2-4 [Mississippi Damage Prevention Summit](#), Tunica, MS

Regulations and Code Compliance: Upcoming PHMSA State Seminars

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

More information is available [here](#).

September 2016

26-30 California (Gas)

26-30 Michigan (Gas)

26-30 Utah (Gas)

October 2016

17-21 Maine (Gas)

24-28 New Jersey (Gas)

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|--|-------------------|-------------------|----------------|
| 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.

OTHER PHMSA UPDATES

PHMSA schedules Pipeline Safety R & D Forum. On November 16-17, PHMSA will convene a 2-day Pipeline Safety and Research Development [Forum](#) to address research that promotes solutions for pipeline safety challenges. The purpose of the forum is to identify key pipeline technical challenges, disseminate information on current research efforts, and identify new research to help address challenges. The forum will address threat/damage prevention, leak detection/mitigation, anomaly detection/characterization, natural gas underground storage, and liquefied natural gas. The forum will be held in Cleveland, Ohio.

PHMSA is accepting applications for One-Call Grants. In August, PHMSA [announced](#) that qualifying state agencies may submit applications for Pipeline Safety One-Call Grants. The grant supports initiatives to promote damage prevention efforts, such as one-call legislation, compliance activities, training and public education. State agencies with section 60105 Certifications or section 60106 Agreements with PHMSA are eligible. Applications are due October 19, 2016.

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.

UPDATES FROM OTHER FEDERAL AGENCIES

FWS issues draft guidance for ESA compensatory mitigation. On September 2, the U.S. Fish and Wildlife Service (FWS) [published](#) its draft Endangered Species Act (ESA) Compensatory Mitigation Policy (CMP). The draft CMP provides new guidance on the use and establishment of compensatory mitigation mechanisms that can be utilized to address unavoidable adverse impacts to ESA-listed, proposed, and at-risk species and their habitat. Typically imposed through Section 7 consultation or Section 10 incidental take permitting, the draft CMP would apply a "net gain" mitigation goal (or "no net loss" at a minimum) for affected resources. The draft CMP also has a preference for compensatory mitigation in advance of impacts, and encourages a shift from the project-by-project application of mitigation to a landscape-scale approach that consolidates mitigation measures in an effort to achieve more effective ecological benefits. Comments on the draft CMP are due by October 17, 2016.

UPDATES ON LITIGATION

ExxonMobil agrees to pay \$12 million in damages for Silvertip pipeline rupture. ExxonMobil and the U.S. Department of Justice's Environment and Natural Resources Division have entered into a [proposed consent](#) under which ExxonMobil will pay \$12 million in natural resources damages relating to the 2011 rupture of the Silvertip pipeline in the Yellowstone River in Montana. The funds will be used by the United States and the state of Montana to restore, rehabilitate, replace, and acquire lost natural resources, with some funds used to reimburse the Oil Spill Liability Trust Fund. The proposed consent

**Recent Van Ness Feldman
Publications**

[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

decree has been lodged with the U.S. District Court and is subject to a 30-day public comment period after publication in the Federal Register.

SELECT UPDATES FROM STATES

CALIFORNIA

SB 840 (Committee on Budget and Fiscal Review). On September 13, the Governor signed SB 840, making several changes to implement the resources and energy budget actions adopted as part of the 2016-17 budget package. The bill's provisions include the following:

Revised definition of "oil." Existing law requires that operators of new or replaced pipelines near environmentally or ecologically sensitive areas use best available technologies, including leak detection technology, automatic shutoff valves, or remote-controlled sectionalizing block valves to reduce the amount of oil spilled during an event. Operators of existing pipelines near these must submit plans by January 1, 2018, to retrofit such pipelines by January 1, 2020. SB 840 defines the term "oil" to mean petroleum, petroleum products, anhydrous ammonia, and ethanol, consistent with Part 195 of PHMSA's regulations.

Reports of State Fire Marshal. Under existing law, the State Fire Marshal regulates the inspection of intrastate hazardous liquid pipelines. SB 840 requires that the State Fire Marshal submit, no later than January 31, 2017, and then annually thereafter until January 31, 2021, a report to the Legislature regarding the number of annual inspections performed, the status of the installation of automatic shutoff systems, and the status of Lines 901 and 903 in the County of Santa Barbara (i.e., the lines owned by Plains All American that ruptured in 2015).

SB 62 (Hill). In August, the California legislature approved legislation that would establish a new Office of Safety Advocate (OSA) within the California Public Utilities Commission (CPUC) to advocate for continuous, cost-effective improvement of the safety management and safety performance of public utilities. The new OSA would participate as a party in CPUC rate-making proceedings and on behalf of customers and advocate for effective public utility safety management and infrastructure improvements; recommend improvements to the CPUC's safety management policy and safety culture; inform the official record of CPUC proceedings about safety-related risks; and assist the CPUC in holding public utilities accountable for safe operations. The bill is awaiting the approval of the Governor.

SB 215 (Leno). In August, the California legislature approved a bill that would expand the CPUC's rules governing ex parte communications. Among other things, the CPUC would be required to establish rules for reporting ex parte communications and determining the types of issues that may be considered procedural matters. The bill also provides for civil penalties for violations of ex parte communication rules and authorizes the attorney general to bring an enforcement action against a CPUC decision-maker or employee for violations. The bill is awaiting the approval of the Governor.

IOWA

On September 14, The Iowa Utilities Board (Board) published a [notice](#) in the Iowa Administrative Bulletin, stating that on August 22, the Board issued an "[Order Adopting Amendments to Natural Gas and Electric Safety Standards](#)," that, among other things, amends state pipeline safety standards to be consistent with federal regulations. The Board did not adopt updated versions of American Society of Mechanical Engineers (ASME) Standard B31.8 or the National Fire Protection Association (NFPA) 59 because PHMSA does not incorporate by reference more current versions. The amendments become effective October 19.

NORTH DAKOTA

According to press [reports](#), on September 13, the North Dakota Legislative Rules Committee, which reviews administrative rules adopted by North Dakota administrative agencies, postponed approval of

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new [rules](#) adopted by the North Dakota Industrial Commission on June 29. The new rules include revised requirements for underground gathering pipelines for crude oil, natural gas, carbon dioxide, and produced water, including: (1) prior notice of construction and pressure testing; (2) design and construction; (3) crew training; (4) inspections; (5) environmental protection; (6) sharing of data; (7) corrosion control; and (8) abandonment. The requirements are also revised for above-ground facilities associated with underground gathering lines. All oil storage, production, and treating sites are required to have dikes unless a waiver is granted. In addition, there are new permitting requirements for saltwater handling facilities pertaining to siting, construction, operation, abandonment, and reclamation. Finally, the revised rules require bonding, subject to certain exceptions, for new facilities and for existing facilities not already bonded as an appurtenance to another facility.

UTAH

On September 15, the Utah Department of Natural Resources [published](#) a notice of a proposed rule that would modify the standards for oil and gas companies to report the release of fluids or natural gas into the environment. The proposal adjusts the quantity standards for natural gas from a transportation facility and for fluid releases. A public [hearing](#) will be convened on September 28 in Salt Lake City.

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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