



**Dates of Interest**

**October 2016**

- 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 [PHMSA Pipeline Safety Research & Development Forum](#), Cleveland, OH
- 16 [API/AFPM Fall Operating Practices Symposium](#), New Orleans, LA



# Pipeline Safety Update

## ISSUE NO. 114 – OCTOBER 6, 2016

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*PHMSA releases interim final rule implementing new Emergency Order authority. PHMSA Rulemakings Update. PHMSA awards \$900,000 to universities for corrosion research. DOT Inspector General announces audit of PHMSA’s Technical Assistance Grant (TAG) program. Select Updates from states.*

### PHMSA Releases Interim Final Rule Implementing New Emergency Order Authority.

On October 4, the Pipeline and Hazardous Materials Safety Administration (PHMSA) released an advance copy of an [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). The PIPES Act expanded PHMSA’s enforcement authority to issue written emergency orders to address “imminent hazards” caused by unsafe conditions or practices. Unlike PHMSA’s existing authorities to issue pipeline-specific corrective action orders or safety orders, an emergency order may be issued to multiple pipeline owners or operators.

An emergency order may prohibit an unsafe condition or practice or impose an affirmative requirement when an unsafe condition, practice, or other activity poses a threat to life or significant harm to property or the environment. For example, an emergency order may address a natural disaster affecting many pipelines in a particular geographic region; a serious flaw discovered in pipe, equipment manufacturing, or supplier materials; or a specific unsafe industry practice revealed by a pipeline accident.

Several provisions in the interim final rule are intended to implement PIPES Act directives. Before issuing an emergency order, PHMSA must consider the impacts on public health and safety, the national or regional economy or national security, and impacts on service reliability and continuity. PHMSA also will consult, as it deems appropriate, with federal and state agencies and entities knowledgeable in pipeline safety or operations, although the rule does not elaborate on the consultation process.

In addition, as required by the PIPES Act, an entity that is subject to and aggrieved by an emergency order may petition PHMSA’s Associate Administrator for review of the order by requesting a formal hearing and describing material facts in dispute. Hearings will be conducted by an Administrative Law Judge (ALJ) in the Department of Transportation’s Office of Hearings who must issue a report and recommendation containing factual findings and conclusions. Hearing procedures are modeled after existing review procedures contained in PHMSA’s regulations for hazardous materials transportation. Petitions that do not request a formal hearing or identify disputed material facts will be handled informally within the Office of Pipeline Safety, but the rule does not describe the applicable procedures.

The interim final rule will become effective on the date it is published in the Federal Register. PHMSA is providing 60 days from the date of publication for the public to file comments on the interim final rule. PHMSA is issuing the rule without prior notice and opportunity to comment because the PIPES Act requires the agency to issue temporary regulations within 60 days of the statute’s enactment. The agency must issue a final regulation by March 2017, at which time the temporary regulations will expire.

**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

State-Specific Association Meetings

October 2016

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](#).

October 2016

17-21 Maine (Gas)

24-28 New Jersey (Gas)

OMB's Office of Information and Regulatory Affairs (OIRA) in the Spring 2016 [Unified Regulatory Agenda](#).

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
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 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 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 awards \$900,000 to universities for corrosion research.** On October 3, PHMSA announced it is providing a total of \$900,000 to three educational institutions as part of its Competitive Academic Agreement Program (CAAP) for pipeline safety research. The [awards](#) of approximately \$300,000 each

## Recent Van Ness Feldman Publications

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

[EPA Expands Tribal Authority to Administer Clean Water Act Programs on Reservations](#) – 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

will go to Iowa State University, West Virginia University and North Dakota State University to fund research projects regarding pipeline corrosion. More information about PHMSA's CAAP is available [here](#).

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](mailto:SAM@vnf.com), Bryn Karaus at [BSK@vnf.com](mailto:BSK@vnf.com), or Tyson Kade at [TCK@vnf.com](mailto:TCK@vnf.com).

## UPDATES FROM OTHER FEDERAL AGENCIES

**DOT Inspector General announces audit of PHMSA's Technical Assistance Grant (TAG) program.** On September 21, the DOT Office of the Inspector General (OIG) [announced](#) that it has initiated an audit of PHMSA's TAG program. The audit is required by the PIPES Act of 2016. The audit will focus on the process used to award grants and oversee recipients' use of funds.

## SELECT UPDATES FROM STATES

### CALIFORNIA

[SB 62](#) (Hill). On September 29, the Governor approved legislation establishing 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 will 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 legislation establishing the OSA will be in effect until January 1, 2020, unless it is repealed or extended before that date.

[SB 215](#) (Leno). On September 29, the Governor approved a bill that expands the CPUC's rules governing ex parte communications. Among other things, the CPUC is now 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 also requires the CPUC to adopt procedures on the disqualification of commissioners due to bias or prejudice similar to those of other state agencies and superior courts.

### MICHIGAN

[H.B. 5908](#) (Townsend)

Introduced September 21, this bill would require the Michigan Public Service Commission (MPSC) to post the state pipeline safety program certification submitted under 49 U.S.C. § 60105 on its website. The bill will also increase the civil penalties for pipeline safety violations from \$10,000 to \$20,000 for each violation for each day the violation persists, and increase the maximum fine from \$500,000 to \$800,000 for any related series of violations. The bill would require that prior to issuing a fine, the MPSC provide a notice of probable violation to the person committing the violation and provide an opportunity for the person to informally discuss the probable violation.

[H.B. 5909](#) (Townsend)

Introduced September 21, this bill would require the MPSC to adopt safety performance metrics for natural gas distribution pipeline safety, and evaluate whether a natural gas utility has met those metrics.

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Safety Update visit:  
[www.vnf.com/knowledgecenter.aspx](http://www.vnf.com/knowledgecenter.aspx)

#### H.B. 5910 (Townsend)

Introduced on September 21, this bill would require that anyone engaged in the transportation of natural gas or owns or operates pipeline facilities to file a plan for inspection and maintenance with the MPSC and to annually review their public education programs with county and local emergency management coordinators.

#### H.B. 5911 (Townsend)

Introduced on September 21, this bill will require the MPSC to submit an annual report to the governor and the legislature identifying the number of pipeline inspectors employed; the number of inspections conducted; the number of hours the inspectors have spent inspecting natural gas pipelines; the number of miles of natural gas pipeline inspected; the number of miles of natural gas pipeline identified as needing replacement, by utility; and the number of miles of natural gas pipeline replaced by each utility.

### NEW JERSEY

#### A 4127 (DeAngelo)

Introduced September 19, this bill would increase civil penalties for pipeline safety violations from \$100,000 to \$200,000 for each violation for each day and increase the maximum penalty from \$100,000,000 to \$2,000,000 for any related series of violations.

### WASHINGTON

Oil Movement by Rail and Pipeline Notification. On August 24, the Department of Ecology issued a new rule establishing notification requirements and procedures to inform emergency response agencies and the public of all crude oil shipments to certain facilities by rail and crude oil transported by transmission pipeline. On a biannual basis, each transmission pipeline operator must provide company and contact information and the volume of crude oil by each listed state or province of origin to the Department of Ecology. Owners and operators of facilities (generally, a structure on or near navigable state waters that transfers oil in bulk to or from a tank vessel or pipeline) receiving oil by rail car must provide advance notice of all scheduled crude oil deliveries the facility will receive. The rule became effective on October 1, 2016. Crude oil transmission pipelines must submit their first biannual notice by January 31, 2017.

Oil Spill Contingency Plan Rulemaking. The Department of Ecology is considering proposed amendments to its Oil Spill Contingency Plan Rule. The proposed 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 proposed amendments are expected to be adopted by October 12 and to become effective November 12, 2016.

### 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](mailto:Susan.Olenchuk@vnf.com) at (202) 298-1896 or [sam@vnf.com](mailto:sam@vnf.com), [Bryn Karaus](mailto:Bryn.Karaus@vnf.com) at (202) 298-1821 or [bsk@vnf.com](mailto:bsk@vnf.com), or any member of the firm's [Pipeline & LNG](#) practice group.