



**Dates of Interest**

**December 2016**

- 13 Comments due on PHMSA's [Emergency Order Interim Final Rule](#)
- 19 [PHMSA Voluntary Information-Sharing System Working Group](#), Arlington, VA

**January 2017**

- 6 Comments due on PHMSA's [Proposed Fee Structure for Underground Natural Gas Storage](#)
- 11-12 [PHMSA's Gas Pipeline Advisory Committee Meeting](#), Arlington, VA
- 17-19 [API/AGA Joint Committee on Pipeline Welding Practices](#), Austin, TX
- 17-19 [AGA Best Practices Kick-Off Meeting](#)
- 30-2/2 [API Inspection Summit](#), Galveston, TX

**March 2017**

- 13-16 [Common Ground Alliance Excavation Safety Conference & Expo](#), Orlando, FL

**April 2017**

- 12-13 AGA Pipeline Safety Management Systems Workshop, Jacksonville, FL

# Pipeline Safety Update

## ISSUE NO. 118 – DECEMBER 8, 2016

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

*Elaine Chao selected as the next Secretary of Transportation. North Dakota Industrial Commission's proposed safety rules for underground crude oil and produced water gathering lines are approved. PHMSA Rulemakings Update. PHMSA issues advisory bulletin addressing safeguarding and securing pipeline facilities. PHMSA announces first public meeting of the Voluntary Information-Sharing System Working Group. PHMSA reschedules meeting of the Gas Technical Advisory Committee. PHMSA appoints new members to the Pipeline Advisory Committees. NTSB releases 2017-2018 Most Wanted List. DOT Office of Inspector General includes lack of criminal prosecution of pipeline safety violations on list of DOT Top Management Challenges for 2017. NASFM updates its online Pipeline Emergency Response Training. Select Updates from states.*

### Elaine Chao Selected as the Next Secretary of Transportation

President-elect Donald Trump has announced that he intends to nominate Ms. Elaine Chao to serve as the Secretary of Transportation. Ms. Chao previously served as Secretary of Labor under President George W. Bush and Deputy Secretary of Transportation under President George H.W. Bush. Ms. Chao also is the wife of Senate Majority Leader Mitch McConnell. Ms. Chao must be confirmed by the Senate, a process that will begin once Congress reconvenes on January 3.

### North Dakota Industrial Commission's Proposed Safety Rules for Underground Crude Oil and Produced Water Gathering Lines Are Approved

On December 5, the North Dakota Legislature's Administrative Rules Committee [approved](#) new [rules](#) that were adopted by the [North Dakota Industrial Commission](#) on June 29 for certain underground gathering pipelines capable of transferring crude oil or produced water from oil and gas production facilities. The new rules establish bonding and notification requirements and a wide range of safety requirements addressing design, construction, inspection, geographic information system locational data, operations, leak detection, spill response, corrosion control, pipeline integrity, repairs, and abandonment. The new rule also establishes requirements for berms around facilities. The rule becomes effective January 1, 2017.

**PHMSA Rulemakings Update.** The tables below summarize the status of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) rulemakings as reported in the Department of Transportation's (DOT) [November Significant Rulemaking Report](#) and by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) in the Fall 2016 [Unified Regulatory Agenda](#). Revisions appear in **bold**.

Note that OIRA estimates several pending final rules to be issued by the end of 2016 and that two proposed rules have estimated publication dates that have already passed. In addition, for the first time DOT provides an estimated publication date for a final rule addressing the Safety of Gas Transmission and Gathering Pipelines.



**Know what's below.  
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State-Specific Association  
Meetings

December 2016

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

February 2017

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

March 2017

27-29 [Louisiana Damage Prevention Summit](#), Baton Rouge, LA

29-30 [South Dakota/North Dakota Pipeline Safety Operator Training Conference](#), Rapid City, SD

Pending Final Rules

Proceeding	DOT Estimated Submission to OMB*	DOT Estimated Publication	OIRA Estimated Publication
Enhanced Emergency Order Procedures	Not listed by DOT	Not listed by DOT	No Estimate Provided
Inflation Adjustment of Maximum Civil Penalties	Not listed by DOT	Not listed by DOT	February 2017
Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Proposed Changes	Not listed by DOT	Not listed by DOT	December 2016
Plastic Pipe Rule	Not listed by DOT	Not listed by DOT	December 2016
Safety of Gas Transmission and Gathering Pipelines	August 29, 2017	December 11, 2017	Not Listed
Safety of Hazardous Liquid Pipelines	Submitted October 18, 2016	December 30, 2016	December 2016
Underground Storage Facilities (interim final rule)	Submitted October 18, 2016	December 30, 2016	December 2016

Pending Notices of Proposed Rulemaking

Proceeding	DOT Estimated Submission to OMB*	DOT Estimated Publication	OIRA Estimated Publication
Standards Update Rule – 2015 and Beyond (formerly the “Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments”)	Not listed by DOT	Not listed by DOT	November 2016
State Pipeline Safety Program Certification	Not listed by DOT	Not listed by DOT	November 2016
Valve Installation and Minimum Rupture Detection Standards	January 24, 2017	May 3, 2017	May 2017

\*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 issues advisory bulletin addressing safeguarding and securing pipeline facilities. On December 9 PHMSA expects to publish an [advisory bulletin](#) reminding pipeline operators of the importance of

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[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

safeguarding and securing pipeline facilities and monitoring SCADA systems for abnormal operations or indications of unauthorized access or interference with pipeline operations. Issued in response to the October incidents involving individuals illegally entering valve sites on four pipelines and closing valves, the advisory bulletin encourages pipeline operators to implement protective measures including cultivating strong relationships with local law enforcement; increasing the frequency of ROW security patrols and deploying new patrolling technologies, such as unmanned aerial systems if permitted; reviewing valve and facility protection measures; and protecting SCADA systems.

**PHMSA announces first public meeting of the Voluntary Information-Sharing System Working Group.** On November 28, PHMSA [announced](#) that on December 19, it will convene the first public [meeting](#) of the newly created Voluntary Information-Sharing System (VIS) Working Group. Section 10 of the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act (PIPES) of 2016 directed PHMSA to convene the VIS Working Group to encourage collaborative efforts to improve analyses of integrity risk. The VIS Working Group will consider sharing of dig verification data; advanced pipeline inspection technologies and exchanging inspection information; sharing in-line inspection data and protecting proprietary data; and barriers to sharing information. The meeting will be held in Arlington, Virginia, and will not be webcast.

**PHMSA reschedules meeting of the Gas Pipeline Advisory Committee.** PHMSA has [rescheduled](#) the [meeting](#) of the Gas Pipeline Advisory Committee for January 11-12, 2017. The GPAC will discuss PHMSA's [proposed rule](#) for onshore gas transmission and gathering pipelines, published April 8, 2016. The meeting previously was scheduled for December 7-8, 2016.

**PHMSA appoints new members to the Pipeline Advisory Committees.** On December 6, PHMSA [announced](#) the appointments of several new members to its Gas and Liquid Pipeline Advisory Committees, which advise and provide peer review to PHMSA on proposed safety standards and risk assessments. The new appointees include individuals from state and federal government and members of the public.

## UPDATES FROM OTHER FEDERAL AGENCIES

**NTSB releases 2017-2018 Most Wanted List.** On November 14, the National Transportation Safety Board (NTSB) released its [Most Wanted List](#) for 2017-2018, presenting the NTSB's advocacy priorities. The NTSB does not identify pipeline safety, but initiatives such as reducing fatigue-related accidents and eliminating alcohol and drug impairment, are relevant to pipeline operators.

**DOT Office of Inspector General includes lack of criminal prosecution of pipeline safety violations on list of Top Management Challenges for 2017.** On November 15, the DOT Office of Inspector General (OIG) released its [report](#) on the DOT's top management challenges. Notably, the report observes that, despite numerous pipeline accidents related to violations of pipeline safety regulations, successful criminal prosecutions are rare. The report suggests that lowering the standard for establishing criminal liability under the Pipeline Safety Act from "knowing and willful" to "reckless" would increase the number of successful criminal prosecutions and deter future pipeline incidents. The report also finds that PHMSA lacks sufficient processes, oversight and project management to address in a timely fashion statutory mandates and recommendations from the NTSB, Government Accountability Office, and OIG. OIG notes that PHMSA has implemented organizational changes to address identified areas for improvement.

## UPDATES FROM INDUSTRY

**NASFM updates its online Pipeline Emergency Response Training.** The National Association of State Fire Marshals (NASFM) has updated its free [online training portal](#) for first responders. The program is based on the NASFM Pipeline Emergencies Program, offering three different levels of self-paced online courses to instruct first responders on how to respond to a pipeline emergency.

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## SELECT UPDATES FROM STATES

### DELAWARE

On November 1, the Delaware Department of Natural Resources and Environmental Control issued a [proposed regulation](#) for aboveground storage tanks. The proposed changes would update definitions to clarify technical requirements and would clarify which version of industry-based standards published by the American Petroleum Institute and other trade associations are applicable to regulated aboveground storage tanks. The proposed changes also would add minimum distances for locating new aboveground storage tanks near private and public wells and address technical requirements associated with release reporting and corrective action needed when releases from aboveground storage tanks occur.

### ILLINOIS

On November 4, the Illinois Commerce Commission released proposed [changes](#) to its pipeline safety regulations to incorporate by reference the October 1, 2016 version of the Federal pipeline safety regulations and add the National Pipeline Mapping System reporting requirement in 49 C.F.R. § 191.29 to the Illinois code.

### MICHIGAN

In November, the Michigan 21<sup>st</sup> Century Infrastructure Commission released a [final report](#) assessing Michigan's infrastructure. The report states that Michigan has approximately 6,700 miles of outdated, "at risk" natural gas pipeline infrastructure that needs to be replaced. Only 669 miles have been replaced since the Michigan Public Service Commission (MPSC) approved accelerated main replacement programs for utilities in 2011. The report recommends that the MSPC accelerate plans to replace at-risk distribution piping more quickly than the current 25 to 30 year window, and that replacements be coordinated with local investment in other infrastructure.

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

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