



**Dates of Interest**

**March 2017**

- 7-9 [PHMSA Risk Modeling Working Group Meeting](#), Houston, TX
- 13-16 [Common Ground Alliance Excavation Safety Conference & Expo](#), Orlando, FL
- 24 [Comments due](#) on DOT proposed rule on drug-testing requirements

**April 2017**

- 12-13 [AGA Pipeline Safety Management Systems Workshop](#), Jacksonville, FL
- 25-27 [API Pipeline Conference and Control Room Forum](#), San Antonio, TX

**May 2017**

- 10 [API/AFPM Spring Operating Practices Symposium](#), Las Vegas, NV
- 15-18 [International Oil Spill Conference](#), Long Beach, California

# Pipeline Safety Update

## ISSUE NO. 122 – FEBRUARY 22, 2017

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*Elaine Chao confirmed as Secretary of Transportation. Mike Mulvaney confirmed as OMB Director. PHMSA withdraws from the Federal Register final rule amending safety regulations for hazardous liquid pipelines from Federal Register. PHMSA Rulemakings Update. DOT proposes amendments to drug-testing regulations. DOT Office of Inspector General includes lack of criminal prosecution of pipeline safety violations on list of DOT top management challenges for 2017. NEB orders online posting of emergency management program information. PG&E sentenced in criminal case for San Bruno incident. Select updates from states.*

### Elaine Chao Confirmed as Secretary of Transportation

On January 31, the Senate confirmed Ms. Elaine Chao as the Secretary of Transportation. Secretary 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.

### Mike Mulvaney Confirmed as OMB Director

On February 16, the Senate confirmed Mike Mulvaney as Director of the Office of Management and Budget (OMB). OMB's Office of Information and Regulatory Affairs (OIRA) is responsible for reviewing rules proposed by executive agencies, including the Pipeline and Hazardous Materials Safety Administration (PHMSA), before publication.

### PHMSA Withdraws from Federal Register Final Rule Amending Safety Regulations for Hazardous Liquid Pipelines

We understand that PHMSA has withdrawn the final rule amending the Part 195 regulations for hazardous liquid pipelines. PHMSA had released a pre-publication copy of the final rule on January 13. PHMSA withdrew the final rule following the January 20 "Memorandum for the Heads of Executive Departments and Agencies" issued by the Assistant to the President and Chief of Staff for the White House, Reince Priebus, instructing agencies to withdraw regulations that had been sent to the Federal Register but not yet published so that they can be reviewed and approved by the new Administration. At this time, the status of the final rule has not been announced.

**PHMSA Rulemakings Update.** The tables below summarize the status of PHMSA's rulemakings as reported in the Department of Transportation's (DOT) [December Significant Rulemaking Report](#), and by OIRA in the Fall 2016 [Unified Regulatory Agenda](#). Due to the change in Administrations, DOT did not release a Significant Rulemaking Report for January.



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

**State-Specific Association  
Meetings**

**February 2017**

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

**March 2017**

8-10 [Ohio Oil & Gas Ass'n Winter Meeting](#), Columbus, OH

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

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

**April 2017**

10-14 [Georgia Municipal Gas Association Pipeline Safety Seminar](#), Macon, GA

18-20 [Virginia State Corporation Commission Damage Prevention Conference](#), Virginia Beach, VA

19-21 [Kansas Independent Oil & Gas Association Midyear](#), Garden City, KS

**Pending Final Rules**

<b>Proceeding</b>	<b>DOT Estimated Submission to OMB*</b>	<b>DOT Estimated Publication</b>	<b>OIRA Estimated Publication</b>
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	Published January 23, 2017 Effective March 24, 2017		
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	Pre-publication copy released January 13; withdrawn from publication in the Federal Register on January 24, 2017		
Underground Storage Facilities (interim final rule)	Issued December 19, 2016 Effective January 18, 2017		

**Pending Notices of Proposed Rulemaking**

<b>Proceeding</b>	<b>DOT Estimated Submission to OMB*</b>	<b>DOT Estimated Publication</b>	<b>OIRA Estimated Publication</b>
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.

**UPDATES FROM OTHER FEDERAL AGENCIES**

**DOT proposes amendments to drug-testing regulations.** On January 23, DOT published a [notice of proposed rulemaking](#) to amend its drug-testing program regulations (Part 40 of Title 49). The proposed rule

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[Administration Takes an Initial Step in its Regulatory Reform Agenda](#) – January 31, 2017

[Second Circuit Reinstates EPA's Water Transfer Rule](#) – January 23, 2017

[Army Corps of Engineers Releases 2017 Nationwide Permits](#) – January 19, 2017

[House of Representatives Prioritize Actions to Reform the Regulatory Process](#) – January 18, 2017

would, among other things, allow federal agencies with drug-testing responsibilities to test for four additional Schedule II (of the Controlled Substances Act) prescription opioid medications and make other modifications. The proposed amendments will harmonize DOT's drug-testing regulations with revised [Mandatory Guidelines](#) of the U.S. Department of Health and Human Services (HHS) regarding drug-testing programs for urine testing that become effective October 1, 2017. DOT and its modal agencies, such as PHMSA, are required to follow the HHS Mandatory Guidelines for the categories of drugs that require testing. Comments on DOT's proposed rule are due March 24, 2017.

**DOT Office of Inspector General includes lack of criminal prosecution of pipeline safety violations on list of DOT top management challenges for 2017.** On February 8, the DOT Office of Inspector General (OIG) released a [statement](#) addressing DOT's top management challenges. The statement reiterated previous OIG findings that, despite numerous pipeline accidents related to violations of pipeline safety regulations, successful criminal prosecutions are difficult to obtain. The OIG notes the recent conviction and sentencing of Pacific Gas & Electric Company (PG&E) for violations related to the 2010 San Bruno, California, incident, but 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.

### UPDATES FROM CANADA

**NEB orders online posting of emergency management program information.** On January 30, Canada's National Energy Board (NEB) announced finalization of [Order MO-002-2017](#) requiring that all companies authorized to construct and operate NEB-regulated oil or gas pipelines or gas processing plants make emergency management program information applicable to those facilities publicly available on company websites no later than July 31, 2017. Regulated companies must confirm to the NEB that all the required emergency management program information has been published online by August 15, 2017.

### UPDATES ON LITIGATION

**PG&E sentenced in criminal case for San Bruno incident.** On January 26, a federal judge sentenced PG&E following its criminal convictions associated with the 2010 San Bruno incident. PG&E was ordered to pay a \$3 million fine and a \$2,400,000 special assessment; perform 10,000 hours of community service, 2,000 of which must be performed by high-level personnel; and advertise on television and in the newspaper, the offenses, convictions, punishment, and steps taken to prevent recurrence. PG&E also was sentenced to 5 years' probation and required to retain an independent monitor for five years, who will help ensure that the company takes reasonable and appropriate steps to maintain the safety of its gas transmission pipeline system, performs appropriate assessment testing, and maintains an effective ethics and compliance program and safety-related incentive program.

### SELECT UPDATES FROM STATES

#### CONNECTICUT

[SB 539](#) (Frantz) would amend Title 16 of the state statutes regarding Public Service Companies to require that the Department of Energy and Environmental Protection study the safety of natural gas pipelines. The bill was referred to the Energy and Technology Committee.

#### PENNSYLVANIA

[SB 242 \(Baker\)](#) would amend the Pennsylvania One Call System by (1) extending the expiration of the Underground Utility Line Protection Act to the end of 2022; (2) transferring enforcement authority from the Department of Labor and Industry to the Pennsylvania Public Utility Commission; (3) removing existing excavation work exemptions for extracting natural resources, minor routine maintenance by political subdivisions, routine maintenance and removal of sediment buildup on public road right-of-ways, and Class 1 gathering pipelines; and (4) establishing a damage prevention committee with

authority to assess administrative penalties for violations. The bill was referred to the Committee for Consumer Protection and Professional Licensure.

### TEXAS

[H.B. No. 1818](#) (Gonzales) would reauthorize the Texas Railroad Commission (TRC) through September 1, 2029 and require that the agency, among other things, (1) develop negotiated rulemaking and alternative dispute resolution policies; (2) develop and publish an annual plan to strategically use the TRC's oil and gas monitoring and enforcement resources; (3) authorize the collection of fees to support pipeline safety and regulatory program costs; and (4) adopt rules to expand application of damage prevention safety standards to include interstate pipelines.

### WASHINGTON

[HB 1611](#) (Farrell) would modify regulatory programs covering the transportation of oil, including requiring railroads, vessels, and pipeline facilities located on or near state navigable waters to require certificates demonstrating the financial ability to pay for costs and damages caused by an oil spill, and requiring updates to oil refinery spill prevention and contingency plans to address the handling of crude oil for export. The bill also would expand the scope of the oil spill Administration and Response Taxes to include oil received by pipeline and require that the construction or enlargement of crude oil pipelines at least 5 miles long or having a diameter of at least 6 inches be subject to review by the Energy Facility Site Evaluation Council. The bill was referred to the House Environment Committee.

### 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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