



Dates of Interest

January 2017

- 26 Comments due on [PHMSA's proposed information collections re Incident and Accident Report forms](#)
- 30-2/2 [API Inspection Summit](#), Galveston, TX

February 2017

- 12-15 [NARUC Winter Committee Meetings](#), Washington, DC
- 17 Comments due on PHMSA's [Interim Final Rule, Safety of Underground Natural Gas Storage Facilities](#)
- 28-3/2 GPAC Meeting on Gas Proposed Rule, Arlington, VA

March 2017

- 7-9 [PHMSA Risk Modeling Working Group Meeting](#), Houston, TX
- 13-16 [Common Ground Alliance Excavation Safety Conference & Expo](#), Orlando, FL

April 2017

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



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Pipeline Safety Update

ISSUE NO. 120 – JANUARY 19, 2017 - UPDATED JANUARY 23, 2017

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PHMSA releases final rule amending safety regulations for hazardous liquid pipelines. PHMSA's Gas Pipeline Advisory Committee holds first meeting to consider proposed regulations for gas transmission and gathering pipelines. PHMSA Rulemakings Update. PHMSA seeks applications for state damage prevention grants. PHMSA announces 2017 minimum rate for random drug testing. PHMSA requests additional comments on revised incident report forms. Select updates from states.

PHMSA Releases Final Rule Amending Safety Regulations for Hazardous Liquid Pipelines

Note: On January 20, 2017, the Assistant to the President and Chief of Staff for the White House, Reince Priebus, issued a "Memorandum for the Heads of Executive Departments and Agencies," (Memorandum) instructing that agencies withdraw regulations that have been sent to the Office of the Federal Register, but have not yet been published, so that they can be reviewed and approved by a department or agency head appointed or designated by the President after January 20, 2017. As of January 23, 2017, PHMSA's final rule amending Part 195 regulations for hazardous liquid pipelines has not been published in the Federal Register, and under the Memorandum, may be withdrawn from the Office of Federal Register. Consequently, the final rule's date of publication and the effective date of the amended regulations may be delayed.

On January 13, the Pipeline and Hazardous Materials Safety Administration (PHMSA) released an [advance copy](#) of its final rule amending the Part 195 regulations for hazardous liquid pipelines. The revised regulations will become effective 6 months after publication in the *Federal Register*. The final rule responds to issues raised by recent pipeline accidents; implements new provisions in the Pipeline Safety Laws; addresses recommendations of the National Transportation Safety Board and the Government Accountability Office; and responds to comments submitted on PHMSA's 2010 [Advance Notice of Proposed Rulemaking](#) and 2015 [Notice of Proposed Rulemaking](#) (NPRM).

The final rule's amendments to Part 195 include the following:

Operators must periodically assess onshore, piggable non-HCA (non-IM) line pipe. At least once every 10 years, onshore hazardous liquid transmission line pipe located outside of high consequence areas (HCA) (*i.e.*, pipe not subject to integrity management (IM) requirements) and that can accommodate in-line-inspection (ILI) tools must be inspected using an ILI tool appropriate for the threats relevant to the pipe segment. If using an ILI tool is operationally impracticable, an operator must use a pressure test, external corrosion direct assessment, or other technology. Use of other technology requires providing PHMSA at least 90 days advance notice and receiving a "no objection" response. Data from an assessment must be analyzed by a person qualified by knowledge, training and experience. Discovery of a condition presenting a potential threat to the pipeline's integrity must occur in 180 days. Initial assessments must be completed by December 31, 2027. Notably, the final rule did not adopt the NPRM's broader proposal to require inspection of all non-HCA pipelines, including covered offshore lines and regulated rural gathering, with ILI tools.

New repair criteria apply to IM pipelines. The final rule adopts more conservative repair criteria for pipelines subject to IM, but does not adopt the NPRM's proposal to apply the revised criteria to non-IM

**State-Specific Association
Meetings**

February 2017

- 1 [Pennsylvania Independent Oil & Gas Ass'n Winter Meeting, Pittsburgh, PA](#)
- 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](#)
- 19-21 [Kansas Independent Oil & Gas Association Midyear, Garden City, KS](#)

pipe. For IM pipe, the following conditions require immediate repair: metal loss greater than 80% of nominal wall; a metal loss defect with a predicted failure pressure of less than 1.1 x maximum operating pressure (MOP); any dent with indication of metal loss, cracking or a stress riser; a topside dent with depth greater than 6%; significant stress corrosion cracking (SCC) (unless the repair timeframe is extended after performing an engineering critical assessment ECA); and selective seam weld corrosion (SSWC) (unless the repair timeframe is extended after performing an ECA). An operator may not use ECA for dents that qualify as immediate repair conditions.

The final rule also identifies conditions that must be evaluated and remediated within 270 days of discovery and establishes requirements for evaluating all other conditions. The final rule eliminates existing 60-day and 180-day repair categories.

IM pipe must be modified to accommodate ILI. Within 20 years, an operator must ensure that each pipeline subject to IM is modified to accommodate the passage of an ILI device. An operator may petition PHMSA for a finding that a pipeline's basic construction cannot be modified to permit the tool or that the operator has determined it would abandon or shut-down the line because of the cost to modify the pipeline. An operator must modify a pipeline affecting a new HCA within 5 years of identifying the HCA, or before performing the baseline assessment, whichever occurs first.

Other modifications will affect IM pipe. The final rule makes other notable modifications to IM requirements:

Assessment methods. Unlike current regulations which allow an operator to assess the integrity of line pipe using ILI, a pressure test, external corrosion direct assessment, or other technology, the final rule requires use of an ILI unless impracticable.

Information analysis. The final rule specifies the data elements, including specific pipe attributes, that an operator must integrate into its information analysis.

Annual verification of covered segments. An operator must annually verify the risk factors used in identifying pipeline segments that could affect an HCA.

Engineering Critical Assessment. The final rule specifies how an operator is to perform an ECA.

Non-HCA pipelines must have leak detection systems. Non-HCA onshore hazardous liquid pipelines transporting liquid in a single phase (except regulated rural gathering pipelines) must implement effective leak detection systems. An operator must evaluate the capability of its leak detection system to protect the public, property and the environment and modify the system as necessary. Computational pipeline monitoring leak detection systems must comply with American Petroleum Institute Recommended Practice 1130. Existing pipelines must comply within 5 years; pipelines that become operational after the rule becomes effective must comply within 1 year.

Pipelines must be inspected after extreme weather events or natural disasters. Within 72 hours after the cessation of an extreme weather event, natural disaster, or other similar event, an operator must inspect all potentially affected pipeline facilities to detect conditions that could adversely affect the pipeline's safe operations, and promptly take appropriate remedial action to ensure the safe operation of the pipeline. An operator unable to commence an inspection because personnel or equipment are unavailable must notify the PHMSA regional director.

New reporting requirements apply to gravity and onshore gathering pipelines. Operators of pipelines that transport hazardous liquids by gravity (which currently are exempt from Part 195) and all onshore hazardous liquid gathering pipelines (including unregulated rural gathering) must submit annual, safety-related condition, and accident reports for these lines. The reports are intended to inform PHMSA about the safety performance of these lines and risks posed to the public. Reports are not required for gravity lines that qualify as low-stress pipelines traveling no more than 1 mile from a facility boundary and that do not cross any waterways used for commercial navigation. Annual reports will be due 12 months after

Recent Van Ness Feldman Publications

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

[Dakota Access Challenges Army Corps After Easement Determination Stalled](#) – December 13, 2016

[BLM’s Final Methane and Waste Prevention Rule Creates Compliance Uncertainty](#) – November 21, 2016

[Presidential Transition and Potential Executive Actions](#) – November 16, 2016

the regulations become effective; safety-related condition reports and accident reports will be required 6 months after the effective date.

Other clarifications in the final rule

New Definitions. The final rule adopts new definitions for the terms “hazardous liquid,” “engineering critical assessment,” and “significant stress corrosion cracking.”

Safety Data Sheets. The final rule codifies the requirement in the PIPES Act of 2016 that, within 6 hours of providing notice to the National Response Center of a hazardous liquid pipeline spill, the pipeline owner or operator must provide safety data sheets on any spilled hazardous liquid to designated federal on-site coordinator and appropriate state and local emergency responders.

Inspection of Underwater Pipelines. The final rule codifies the PIPES Act requirement that operators of non-offshore underwater hazardous liquid pipelines in high consequence areas located at depths greater than 150 feet must complete ILI assessments at least once every 12 months and use other technologies that further the operator’s understanding of the integrity of the pipeline.

PHMSA will revise information collected from operators. PHMSA will submit new and revised information collection requests to the Office of Management and Budget (OMB) seeking authorization to collect the information proposed in the final rule. Comments will be due 60 days after the final rule is published in the *Federal Register*.

PHMSA’s Gas Pipeline Advisory Committee Holds First Meeting to Consider Proposed Regulations for Gas Transmission and Gathering Pipelines

On January 11-12, the Gas Pipeline Advisory Committee (GPAC) convened the first of at least two meetings to discuss PHMSA’s [NPRM](#) that would extensively modify Part 191 and Part 192 of the federal pipeline safety regulations applicable to gas transmission and gathering pipelines. GPAC is a peer review committee established under the Pipeline Safety Laws and advises PHMSA on proposed safety standards, making recommendations regarding the “technical feasibility, reasonableness, cost-effectiveness, and practicability” of proposed standards. GPAC considered the following topics: modifying the 7-year reassessment interval under IM, safety features for ILI launchers and receivers, seismicity provisions, inspections after extreme weather events, management of change, records, corrosion control, corrosion preventative and mitigation measures, and IM clarifications. The next meeting is scheduled for February 28-March 2.

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

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	Publication expected January 23, 2017	December 2016

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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	Advance copy released January 13, 2017		
Underground Storage Facilities (interim final rule)	Issued December 19, 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 seeks applications for state Damage Prevention Grants. PHMSA is seeking applications from eligible States and municipalities to obtain funding for damage prevention program activities. Applications are due January 23. Details on the grant opportunity are available [here](#) by searching for Funding Opportunity Number DTPH5617SN000001.

PHMSA announces 2017 minimum rate for random drug testing. On December 27, PHMSA issued a [notice](#) announcing that the minimum random drug testing rate for covered employees will remain at 25 percent during 2017. PHMSA’s announcement also reminds operators that drug and alcohol testing information is required for contractors performing or ready to perform covered functions.

PHMSA requests additional comments on revised incident and accident report forms. On December 27, PHMSA issued a [notice](#) and request for comments regarding information collections to revise the Incident Report forms for gas distribution systems, natural and other gas transmission and gathering pipeline systems, and liquefied natural gas facilities, and the Accident Report form for hazardous liquid pipeline systems. The notice was initially [proposed](#) on May 13, 2016 and the current notice addresses comments received in response to the previous notice. PHMSA will submit this information collection to

OMB for approval. Comments on the burden estimate associated with these information collections must be submitted to OMB by January 26.

SELECT UPDATES FROM STATES

MISSOURI

In November 2016, the Missouri Public Service Commission proposed to amend its gas pipeline safety regulations to adopt the 2015 amendments to the annual, incident, and safety-related condition reporting requirements in 49 C.F.R. Part 191 and incorporate by reference current versions of report forms; adopt amendments to gas pipeline safety regulations in 49 C.F.R. Part 192 promulgated between September 2013 and January 2016 and make clarifications; and amend the Missouri regulations to conform to amendments to the drug and alcohol testing requirements of 49 C.F.R. Parts 40 and 199. A public hearing on these proposals is scheduled for January 20.

NEW YORK

[S. 66](#) (Hoylman) and [SB 02186](#) (Alcantara)

These bills would require operators of liquid petroleum pipeline facilities to accelerate the repair, rehabilitation, and replacement of equipment or pipelines that are leaking or at a high-risk of leaking or are no longer fit for service. The New York Public Service Commission (NYPSC) would be required to develop prioritized timelines to repair all leaks (including non-hazardous leaks) based on their severity, or replace leaking or high-risk piping or equipment. Operators in cities with a population of one million or more would be required to establish a database of pipeline infrastructure that includes age and state of repair that would be shared with the “coordinated building inspection data analysis system.” The bills have been referred to the Senate Committee on Energy and Telecommunications.

The NYPSC has amended its regulations (see page 33 at this [link](#)) to align them with 49 C.F.R. Parts 192, 193, and 195 of the federal pipeline safety regulations. The amendments became effective on December 28, 2016.

OKLAHOMA

On December 29, 2016, the Oklahoma Corporation Commission issued a [notice of proposed rulemaking](#) that would amend the state gas and hazardous liquid pipeline safety regulations to adopt updated versions of federal regulations under Part 192, Part 195, and Part 198. Comments are due February 21. The Transportation Division of the OCC will convene a technical conference on February 23. The OCC *en banc* will consider permanently adopting the proposed rules at a public hearing to be convened on March 9.

OREGON

[S.B. 7](#) (Courtney) and [HB 2131](#) (Warner)

These bills propose directing the Environmental Quality Commission to adopt rules applying certain spill prevention and emergency response planning requirements to railroads that own or operate high hazard train routes. The Senate version of the bill has been referred to the Committee on Veterans and Emergency Preparedness.

WISCONSIN

The Wisconsin Public Service Commission has [proposed](#) to amend its regulations to adopt the federal pipeline safety regulations in 49 C.F.R. Parts 192, 193 and 199 as adopted through the effective date of the proposed rules. Comments were due January 16.

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

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