



## Pipeline Safety Update Issue No. 64 –September 27, 2013

*PHMSA issues final rule updating enforcement and rulemaking procedures, announces grants to states and universities, extends deadline for filing comments on notice of inquiry regarding class location requirements, requests comments on revised NPMS information collection request. NAPSAR updates compendium of state gas pipeline safety standards, and elects new leadership. CPUC provides procedures for gas safety citation program.*

### PHMSA Issues Final Rule Updating Enforcement and Rulemaking Procedures

On September 25, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a final rule implementing numerous changes to its Part 190 procedural rules. Most of the changes relate to the agency’s processes for enforcement cases, with a few changes to the rulemaking procedures. Many of the changes implement procedural and other requirements specified in the Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011 (2011 Act). The amended rules take effect October 25, 2013. Key observations are set forth below.

- The Regional Director’s recommendations are now part of the case file and are available to respondents. Previously PHMSA did not provide these to respondents.
- PHMSA declined to expand its consent order regulations to include settlements of civil penalty cases, noting that “it is not the agency’s practice to negotiate over civil penalty amounts.”
- PHMSA decided not to make a petition for reconsideration mandatory before a respondent can petition the United States Court of Appeals for review of PHMSA final order.
- PHMSA decided not to allow petitions for reconsideration of corrective action orders, as originally proposed, finding that this review would be duplicative.
- New provisions detailing the role and powers of the Presiding Official, and prohibitions on separation of functions and ex parte communications.
- Updated penalty provision to reflect the larger administrative caps from the 2011 Act.
- New provision for enforcement of Part 194 oil spill plan requirements.
- Revisions and clarifications to the response options for Notices of Probable Violation.

<b>Dates of Interest</b>	
<b><u>October 2013</u></b>	
7	<a href="#">Comments due</a> on PHMSA’s revised IVP
11	<a href="#">Comments due</a> on PHMSA’s OMB Information Collection on Revised Liquid Operator’s Accident Report form
15	<a href="#">Comments due</a> on PHMSA’s Notice of Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments
15	<a href="#">Comments due</a> on TSA Renewal of OMB Information Collection on pipeline security
18	<a href="#">Comments due</a> on PHMSA’s NPMS Information Collection Request
<b><u>November 2013</u></b>	
1	<a href="#">Comments due</a> on PHMSA’s Notice on Class Location Requirements
4-5	<a href="#">American Gas Assn. Executive Safety Leadership Summit</a> , Washington, DC
17-20	<a href="#">NARUC Annual Meeting</a> , Orlando, FL
21-22	<a href="#">2013 Pipeline Safety Trust Conference</a> , New Orleans, LA

- A new list of the materials contained in PHMSA's case file for enforcement actions.
- A clarification that respondents may withdraw a request for a hearing and instead provide a written response.

Van Ness Feldman has created a redline showing how the final rule amends existing regulatory text. Please contact Susan Olenchuk (202-298-1896 or [sam@vnf.com](mailto:sam@vnf.com)) or Jim Curry (202-298-1831 or [jbc@vnf.com](mailto:jbc@vnf.com)) for a copy.

## **PHMSA Announces Funding Awards to Support Pipeline Safety Programs**

On September 13, PHMSA announced that it awarded a total of \$1.5 million to twenty states to support their underground pipeline damage prevention programs. The states will use the funding to support their damage prevention efforts and one call centers. The press release is [here](#).<sup>1</sup>

Separately, on September 25, PHMSA awarded \$800,000 to eight universities as part of the Competitive Academic Agreement Program (CAAP) to support technical research into four areas, including pipeline corrosion, defect detection, modeling defects and loads in pipelines, and modeling anomalies and repairs for corroded pipe. The press release is [here](#).<sup>2</sup>

## **Other PHMSA Updates**

*New Comment Deadline for NPMS Information Collection Request.* On September 18, 2013, PHMSA issued a notice announcing that it is submitting to the Office of Management and Budget (OMB) a revised information collection request concerning the information PHMSA collects from pipeline operators relating to the National Pipeline Mapping System (NPMS). The notice responds to a comment received by the Pipeline Safety Trust to the initial notice issued in June 2013 and provides an additional 30 days for public comment. Comments are due October 18, 2013. The September 18 notice is [here](#).<sup>3</sup>

*Comment Deadline Extended for Notice of Inquiry on Class Location Requirements.* On September 30, PHMSA will publish a notice in the *Federal Register* extending the deadline for submitting comments on its recently issued notice regarding whether integrity management (IM) program requirements should be expanded beyond high consequence areas for gas transmission pipelines and such an expansion would mitigate the need for class location requirements. The notice also clarifies that the proceeding is a Notice of Inquiry, not a Notice of Proposed Rulemaking. Comments are now due on November 1, 2013. The original August 1 notice is [here](#).<sup>4</sup> The September 30 notice is [here](#).<sup>5</sup>

*Status of PHMSA rulemakings.* The chart below reflects publicly available information on the status of PHMSA rulemakings. More information from DOT is [here](#).<sup>6</sup> Information from OMB's Office of Information and Regulatory Affairs (OIRA) is [here](#).<sup>7</sup> New information appears in bold.

### **Federal Funding Resource Center**

Van Ness Feldman continually identifies federal funding opportunities related to energy, environment, natural resources, and public lands, including PHMSA grants.

[www.vnf.com/funding](http://www.vnf.com/funding)

The site is updated daily and a weekly email highlights new and expiring opportunities. To sign up for the weekly updates, e-mail [vnf@vnf.com](mailto:vnf@vnf.com) with "FFO Subscribe" in the subject line.

### **Regulations and Code Compliance: Upcoming PHMSA State Seminars**

#### **October 2013**

7-11	Virginia (Gas & Liquids)
9-11	Mississippi (Gas)
15-18	New Jersey (Gas)
21-25	Vermont (Gas)
21-25	Kansas (Gas)
21-25	New England (Gas)

*PHMSA offers training on gas and hazardous liquid pipeline safety regulations. More information is available [here](#).*

<b>Rulemaking</b>	<b>Next Action</b>	<b>Estimated Date of Next Action</b>
Miscellaneous Rule on Construction Inspections, Leak Surveys, etc.	Publication of Final Rule	December 6, 2013
Part 190 Enforcement and Regulatory Procedures Update	Publication of Final Rule	<b>Sept. 25, 2013 (issued)</b>
Enforcement of State Excavation Damage Laws	Publication of Final Rule	January 16, 2014
Standards for Conducting Condition Assessments of In-Service Pipelines	Publication of NPRM	March, 2013
Safety of On-Shore Hazardous Liquid Pipelines	Publication of NPRM	January 14, 2014
Excess Flow Valves	Publication of NPRM	January 22, 2014
Changes to NPMS Data Collection and Standards	Publication of NPRM	October 18, 2013
Miscellaneous Rule on Special Permit Renewals, Cost Recovery for Design Reviews, and Incident Reporting	Publication of NPRM	January, 2014
Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments	Publication of NPRM	August 16, 2013 (issued)
Safety of Gas Transmission Pipelines	Publication of NPRM	February 17, 2014
Issues related to Use of Plastic Pipe in the Gas Pipeline Industry	Publication of NPRM	April 2014

## Industry Updates

*NAPSR Updates Compendium of State Gas Pipeline Safety Standards.* The National Association of Pipeline Safety Representatives (NAPSR) has released an updated compendium of state gas pipeline safety standards. The report details areas where state regulatory requirements exceed the minimum standards required by federal law. A press release is [here](#),<sup>8</sup> and the report is available [here](#).<sup>9</sup>

*NAPSR Elects New Leadership.* During its annual meeting, NAPSR elected David Lykken (WA) as its new Secretary. Mr. Lykken serves as the Pipeline Safety Director at the Washington Utilities and Transportation Commission. Effective October 1, Darin Burk (IL) will replace current Chair Randy Knepper (NH), Robert Miller (AZ) will become Vice Chair and Secretary-elect Lykken will join the Executive Committee and Board of Directors.

## Select Activities from the States

*CPUC Provides Procedures for Gas Safety Citation Program.* On September 30, the California Public Utilities Commission (CPUC) announced that it has finalized its internal procedures to implement the Gas Safety Citation Program. The procedures allow staff-level CPUC employees to issue citations to natural gas companies for non-compliance with state or federal gas safety statutes and regulations. Penalties can reach up to \$50,000 per day per violation. The press release is available [here](#),<sup>10</sup> and the CPUC has also released its [standard operating procedure](#)<sup>11</sup> and its [citation form](#).<sup>12</sup>

### State-Specific Association Meetings

#### September 2013

30-10/2 [Oklahoma Damage Prevention Summit](#), Norman, OK

#### October 2013

8-10 [Virginia State Corporation Commission Pipeline Safety Conference](#), Virginia Beach, VA

16-17 [Pennsylvania PUC Gas Safety Seminar](#), State College, PA

19-22 [Oklahoma Independent Petroleum Assn Fall Conference](#), Ridgedale, MO

22-23 [Kansas Pipeline Safety Seminar](#), Salina, KS

28-30 [Mississippi Damage Prevention Summit](#), Tunica MS

## For Additional 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, please contact [Susan Olenchuk](#) at (202) 298-1896 or [sam@vnf.com](mailto:sam@vnf.com), [Jim Curry](#) at (202) 298-1831 or [jbc@vnf.com](mailto:jbc@vnf.com), or any member of the firm's [Natural Gas](#) or [Oil & Products Pipelines](#) practice groups.



*In February 2012, Van Ness Feldman expanded its capabilities by combining practices with the Seattle law firm of GordonDerr LLP, a preeminent real estate, land use, water law, and civil litigation firm in the Pacific Northwest. Learn more at [www.vnf.com](http://www.vnf.com).*

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<sup>1</sup> PHMSA Press Release.

<http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.ebdc7a8a7e39f2e55cf2031050248a0c/?vgnextoid=5eb3c4a1c0cf0410VgnVCM100000d2c97898RCRD&vgnnextchannel=623b143389d8c010VgnVCM1000008049a8c0RCRD&vgnnextfmt=print>.

<sup>2</sup> PHMSA Press Release.

<http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.ebdc7a8a7e39f2e55cf2031050248a0c/?vgnextoid=85ad0f1137e31410VgnVCM100000d2c97898RCRD&vgnnextchannel=d248724dd7d6c010VgnVCM10000080e8a8c0RCRD&vgnnextfmt=print>.

<sup>3</sup> PHMSA Information Collection Request Notice and Request for Comments

<http://www.gpo.gov/fdsys/pkg/FR-2013-09-18/pdf/2013-22622.pdf#page=1>

<sup>4</sup> PHMSA August 1 Class Location Notice

<http://www.gpo.gov/fdsys/pkg/FR-2013-08-01/pdf/2013-18286.pdf>

<sup>5</sup> PHMSA Notice Extending Comment Period.

<https://s3.amazonaws.com/public-inspection.federalregister.gov/2013-23798.pdf>

<sup>6</sup> DOT Significant Rulemaking Report for September 2013.

<http://www.dot.gov/sites/dot.dev/files/docs/AUG%202013%20Internet%20Report.docx>

<sup>7</sup> OIRA DOT Rulemaking Status Page.

[http://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPub=true&agencyCd=2100&Image58.x=52&Image58.y=10](http://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCd=2100&Image58.x=52&Image58.y=10)

<sup>8</sup> NARUC Press Release.

<http://www.naruc.org/News/default.cfm?pr=393>.

<sup>9</sup> NARUC State Pipeline Safety Requirements and Initiatives Providing Increased Public Safety Levels – Second Edition.

<http://www.naruc.org/resources.cfm?p=397>.

<sup>10</sup> California PUC Press Release.

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M077/K200/77200875.PDF>.

<sup>11</sup> California PUC Standard Operating Procedure for Gas Safety Citation Program.

<http://www.cpuc.ca.gov/NR/rdonlyres/20DB8629-0BF5-4F30-A68A-1FE5BB631F4F/0/SEDSOPGasCitation92013.pdf>.

<sup>12</sup> California PUC Citation Form for Gas Safety Citation Program.

<http://www.cpuc.ca.gov/NR/rdonlyres/9437FFB9-BDFE-489E-AB35-3D3C9B9A83A7/0/StandardSEGasCitationForm9202013.pdf>.