

**PHMSA Rulemakings and Enforcement**  
**Association of Oil Pipelines Annual Business Conference**

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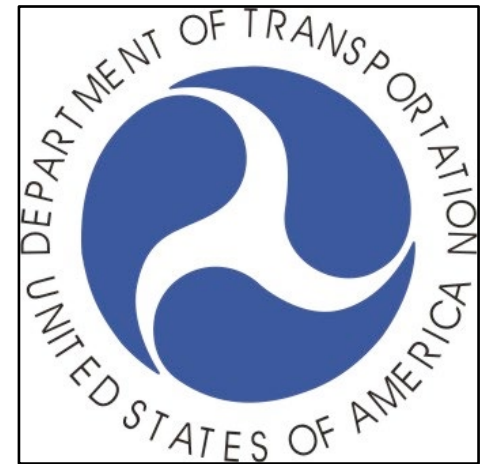


# **Introductions Course Overview**



## Course Overview

- Context – Influences Driving Change
- Pending Rulemakings
- Rulemaking Q&A
- Enforcement
- Enforcement Q&A





**Context –  
Influences Driving Change**



## Context – Influences Driving Change

- Context
  - High-Profile Incidents of Late
  - High Level of Construction Activity
- Influences Driving Change
  - Pipeline Safety Act of 2011 Mandates
  - The President Said So
  - The Secretary Said So
  - The NTSB Said So
  - The Industry Said So
  - Who *Doesn't* Want Enhanced Safety?





# Pending & Expected Rulemakings

**DEPARTMENT OF TRANSPORTATION  
Pipeline and Hazardous Materials  
Safety Administration  
49 CFR Parts 190, 192, 193, 195, and  
199**

**[Docket No. PHMSA–2012–0102]  
RIN 2137–AE29**

**Pipeline Safety: Administrative  
Procedures; Updates and Technical  
Corrections**

**AGENCY:** Pipeline and Hazardous  
Materials Safety Administration  
(PHMSA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This Notice of Proposed  
Rulemaking updates . . . .



## Pending Rulemakings

- **Safety of On-Shore Hazardous Liquid Pipelines**
  - Scope of the pipeline safety regulations for hazardous liquid lines
  - Criteria for designation as a High Consequence Area (HCA)
  - Leak detection and Emergency Flow Restricting Devices
  - Repair criteria in non-HCA
  - Stress Corrosion Cracking (SCC)
  - Assessing non-HCAs
- **Administrative Procedures (Part 190)**
- **Excavation Damage Prevention**



# Rulemaking Q&A



# Enforcement





## Policy Considerations

- What's Driving Current Trends / Areas of Focus?
  - Incidents – Widespread Publicity / Fallout
  - Better Informed / More Involved Public
  - Social Memory Fade
  - Pipeline Safety Act of 2012
    - Increased Penalty Authority
    - Inspection Resources
  - NTSB Recommendations
  - Project Development – Getting It Right, Right Off the Bat
  - Congress Said So, The President Said So, ....



## Rulemaking Without Rulemaking

- Sources of Rules
  - Pipeline Safety Act
  - Regulations – 49 CFR Parts 194, 195, 199
- “Non-Binding” Sources
  - Interpretations
  - Advisory Bulletins
  - FAQs
  - Agency Enforcement Guidance
- So, Can PHMSA Enforce an Interpretation, ADB or FAQ?
- How Is That?
- *Bell v NLRB*, and Can PHMSA Survive Judicial Review?



## Jurisdiction – The Seemingly Simple

- PHMSA's Organic Statute – the Pipeline Safety Act
- The Breadth and Depth of Agency Power Starts Here and Ends Here
  - Transportation by Pipeline
  - Storage Incidental to Transportation
- The Problem of the Tacit Agreement
- When May PHMSA Broaden Its “Reach”?
- Recent Situations
  - Low Stress Systems – What's a “System”?
  - The Refining Facility Exception – Stay Tuned....



## General Trends

- Penalties
  - Where Once a Warning Would Do...
  - Greater Magnitude
  - But Where is the Penalty Policy – How Do They Get There?
- Violations
  - Where Once a Finger-Wag Would Do...
- Agency Allegations
  - Administrative Procedure Act Standards
  - Rational Analysis
- Compromise – What Are the Odds?



## Targets

- Maximum Operating Pressure / Record Keeping
- Accidents
- New Construction
- Reversal and Re-Purposing
- Integrated Inspections
- Facilities Previously (“Thought” to Be) Non-Jurisdictional





# Enforcement Q&A



# Thank You

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