

Regulation of Natural Gas Gathering Lines In the Face of Unprecedented Demands on US Pipeline Infrastructure

Existing gathering line regulation reflects collaboration between pipeline operators and regulators, a model useful for new regulatory efforts as well.

Background

America's natural gas pipeline network transports natural gas to and from most locations across the continental United States, and across US borders with Canada and Mexico. The nation's natural gas pipeline infrastructure generally consists of three types of interconnected pipelines that together transport natural gas from producers to consumers. These include upstream gathering lines, which move gas from production fields to processing plants; transmission lines, typically larger, higher pressure pipelines which carry processed natural gas longer distances towards the markets where the gas will be consumed; and finally, downstream distribution lines, typically lower pressure, local lines that deliver the gas to ultimate end users who burn it either in industrial processes or for heating and cooking. Together, these make up the nation's pipeline system.

As discussed in Latham & Watkins' [June 29, 2017 Client Alert](#), the Pipeline and Hazardous Materials Safety Administration (PHMSA) — the federal agency in charge of regulating the safety of the nation's pipelines¹ — published a notice of proposed rulemaking (NPRM) in 2016 that, if finalized, would significantly expand the requirements for the nation's natural gas pipelines, particularly gathering lines.² Historically, gathering lines were smaller in diameter as compared to gas transmission lines, and operated at lower pressures. Due to changing demand factors, however, some gathering lines today have diameters equal to or larger than some transmission lines, and are being operated at higher pressures. This change in the nature of gathering lines, and a series of recent safety incidents with pipelines generally, has prompted PHMSA to consider changes to its regulations in this area.

This White Paper provides a historical backdrop for the current gathering line regulations, to help contextualize the ongoing regulatory developments concerning onshore gathering lines that will unfold over the coming months.

Regulatory History of Gathering Lines

For many years, PHMSA regulated natural gas gathering lines only in populated areas.³ In 2003, disagreements over the classification of various segments of pipeline operated by a few of the largest gas gathering line operators in the United States prompted the Research and Special Programs Administration (RSPA) — the predecessor agency to PHMSA — to clarify the difference between production, gas gathering, and transmission lines.⁴ As a result, RSPA held public meetings and sought comments on an expanded definition of a regulated gathering line, and requested feedback from industry

members regarding potential safety rules for gathering lines in rural areas specifically.⁵ RSPA also sought comments regarding the appropriate beginning points and endpoints of gathering lines, as well as comments on the factors it should consider in regulating gathering lines.⁶

At that time, industry members urged RSPA to define “gathering” in accordance with American Petroleum Institute Recommended Practice 80, “Guidelines for the Definition of Onshore Gathering Lines” (RP 80).⁷ RP 80 defines “gathering line” as:

(a) means any pipeline or part of a connected series of pipelines used to

(1) transport gas from the furthestmost downstream point in a production operation to the furthestmost downstream of the following endpoints, which physically may have intermediate deliveries (to other production operations, pipeline facilities, farm taps, or residential/commercial/industrial end users) that are not necessarily part of the gathering line:

(A) the inlet of the furthestmost downstream natural gas processing plant, other than a natural gas processing plant located on a transmission line,

(B) the outlet of the furthestmost downstream gathering line gas treatment facility,

(C) the furthestmost downstream point where gas produced in the same production field or separate production fields is commingled,

(D) the outlet of the furthestmost downstream compressor station used to lower gathering line operating pressure to facilitate deliveries into the pipeline from production operations or to increase gathering line pressure for delivery to another pipeline, or

(E) the connection to another pipeline downstream of:

(i) the furthestmost downstream endpoint identified in (A), (B), (C) or (D), or (in the absence of such endpoint)

(ii) the furthestmost downstream production operation; or

(2) transport gas from a point other than in a production operation exclusively to points in or adjacent to one or more production operations or gathering facility sites for use as fuel, gas lift, or gas injection gas within those operations; and

(b) does not include a natural gas processing plant.⁸

RP 80, which was developed by an industry coalition that included representatives from more than 20 petroleum industry associations, provides a functional description of onshore gas gathering pipelines, and was a logical source material, as pipeline operators had themselves adopted its standards, descriptions, and diagrams.⁹ As for the regulation of gathering lines, industry members recommended that PHMSA review risks related to rural gathering lines and then target regulations towards gathering line segments with identified problems.¹⁰

PHMSA issued a proposed rule two years later.¹¹ The agency used RP 80 to define “onshore regulated gas gathering,” as the industry had suggested, subject to certain limitations on the starting point and potential endpoints of gathering.¹² PHMSA also proposed a model for regulating gathering lines under

which “regulated onshore gathering lines” would be divided into two risk categories, with the higher-risk facilities subject to more stringent regulations.¹³ The proposed rule was generally well received.¹⁴

PHMSA then issued its final rule in 2006. The final rule described that the then-existing definitions of “gathering line,” “transmission line,” and “distribution line” were circular, and that the complexity of many gathering systems had increased the difficulty of distinguishing gathering lines.¹⁵ The basic definition of “gathering line” adopted in 2006 — which remains unchanged today — is “a pipeline that transports gas from a current production facility to a transmission line or main.”¹⁶ In the 2006 final rule, PHMSA determined that it would focus on “just which gathering lines would be regulated for safety.”¹⁷

Accordingly, PHMSA applied the industry standard in RP 80, and incorporated it by reference into its new regulation.¹⁸ Consistent with the method described in its proposed rule, PHMSA implemented a two-tiered and risk-based approach:¹⁹ First, line locations are now divided into classes from “1” (rural) to “4” (densely populated), based upon the number of buildings or dwellings for human occupancy within an area. Second, allowable pipe stresses, as a percentage of “specified minimum yield strength (SMYS),” decrease as class location increases from Class 1 to Class 4 locations.²⁰

In the 2006 final rule, PHMSA explained that “[r]egulation of an onshore gathering line should ... depend ... on the risk the line poses to the public based on its pressure and proximity to people.”²¹ Class 1 (rural) lines thus remain outside of the regulated categories, though PHMSA noted that if evidence later showed that Class 1 lines presented an unacceptable level of risk, the agency would consider expanding its regulations to cover segments of, or potentially even all, Class 1 lines.

NPRM to Extend Gathering Line Regulation

The 2011 Pipeline Safety Act (Pipeline Safety Act) directed PHMSA to conduct a study of gathering lines to assess the sufficiency of the existing regulatory regime, the economic impact and feasibility of applying existing regulations to unregulated gathering lines — thus Class 1 lines — and the need to modify or revoke existing gathering line exemptions.²² In eventual response, PHMSA published a NPRM in 2016, proposing several revisions to gathering line regulations.²³ PHMSA aimed, in part, to address recent developments in natural gas exploration and production,²⁴ explaining that operators are increasingly constructing shale gas gathering lines that far exceed historical operating parameters, particularly with respect to diameter and pressure.²⁵ PHMSA thus proposed modifying the definition of a “gathering line” potentially subject to regulation to mean “a pipeline, or a connected series of pipelines, and equipment used to collect gas from the endpoint of a production facility/operation and transport it to the furthestmost point downstream of” four defined “endpoints.”²⁶ The agency further proposed that an “onshore production facility” or “onshore production operation” would be redefined to mean “wellbores, equipment, piping, and associated appurtenances confined to the physical acts of extraction or recovery of gas from the earth and the initial preparation for transportation.”²⁷ The NPRM also proposed redefining “production facilities” to mean facilities that “terminate at the furthestmost downstream point where: [m]easurement for the purposes of calculating minerals severance occurs; or there is commingling of the flow stream from two or more wells.”²⁸ Practically, the modified definitions would result in regulation of some previously unregulated rural gathering lines, and narrow the scope of unregulated production operations, expanding the scope of potentially regulated gathering operations to points much closer to and potentially including the wellhead, depending on the facility’s configuration.

The NPRM further proposed requiring operators to determine the beginning and end points of each gathering line, and maintain records documenting those determinations.²⁹ Those records would be required to be complete within six months of the rule’s effective date, or before the pipeline is placed in

operation.³⁰ PHMSA also released a Preliminary Regulatory Impact Analysis (PRIA) with the NPRM to address the potential economic effects of the proposed gathering line regulations.³¹

Industry stakeholders submitted more than 400 comments to the NPRM in the months following its issuance before the comment period closed. On balance, the comments demonstrated that while the industry favors measures that will unify and standardize regulatory standards, various segments of the upstream gathering and processing community and gathering pipeline operators oppose efforts to expand reporting obligations and other regulatory requirements to previously unregulated gathering pipelines.

Revived Questions Regarding Extension of Gathering Line Regulation

In a more recent Department of Transportation (DOT) notice-and-comment period ending July 24, 2017, DOT sought comments identifying “non-statutory requirements that the Department imposes that should be removed or revised” because they “unjustifiably delay or prevent completion of surface, maritime, and aviation transportation infrastructure projects.”³² DOT requested comments on regulations issued by the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, the Federal Transit Administration, and the Maritime Administration, as well as PHMSA.

In response, several industry stakeholders renewed their concerns about PHMSA’s proposed gathering pipeline regulations.³³ In a new set of comments addressing the pending proposed rule, these stakeholders have reiterated some of their earlier concerns — including that PHMSA’s proposed rule improperly modifies the regulatory framework for determining whether a pipeline qualifies as a gathering line subject to regulation without complying with congressional mandates, and that expansion of existing reporting requirements to operators of previously unregulated gathering lines is beyond the scope of PHMSA’s authority.³⁴

Other commentators pointed out that PHMSA has not clarified whether it had either followed its Congressional direction in Section 21 of the Pipeline Safety Act prior to issuing the proposed rulemaking, or otherwise analyzed qualitative or quantitative data demonstrating that such gathering lines pose a direct risk to the public.³⁵ (By contrast, in a recent rulemaking proceeding for hazardous liquid gathering lines, PHMSA identified that data must be collected to understand any need for regulatory oversight.³⁶) On balance, here again while the industry tends to favor measures that will unify and standardize regulatory standards, certain stakeholders in the industry have questioned PHMSA’s authority and proposal to extend — substantially — reporting obligations and other regulatory requirements to segments of previously unregulated gathering pipeline.

As noted above, PHMSA currently requires operators to use RP 80 to determine if a pipeline meets the definition of a regulated onshore gathering line.³⁷ PHMSA’s NPRM proposes to eliminate the incorporation by reference of RP 80, however, and to establish in its place 15 new definitions, and to revise two current definitions, in the regulations applicable to gathering lines.³⁸ Certain industry commenters renewed their concern that PHMSA is purporting to supplant RP 80, which had been thoroughly vetted in a multi-year process before being incorporated in the 2006 final rule, and also indicated that certain suggested definitions in the NPRM appear to modify the current definitions in an unfounded or unclear manner.³⁹

Certain commenters further argued that amendment of the definition of gathering lines is arbitrary and capricious (as it is unsupported by technical justification), and PHMSA has not provided data demonstrating that the existing regulations are inadequate.⁴⁰ Finally, a number of gathering pipeline interests commented that PHMSA provides no justification for requiring unregulated gathering line operators to comply with certain new reporting requirements. In their view, the NPRM does not explain how or why all of the data that unregulated gathering line operators would be required to provide is

pertinent to the agency's determination of the need for future regulation. There, therefore, commentators have argued that the proposed application of certain provisions to these operators is unnecessarily burdensome. Although PHMSA may require unregulated gathering line operators to provide "information pertinent to [PHMSA's] ability to make a determination as to whether and to what extent to regulate gathering lines," the proposal to extend all of the Part 191 reporting requirements is argued to exceed this mandate.⁴¹

Conclusion

PHMSA has indicated that it will present gathering line provisions of its pending NPRM to the Gas Pipeline Advisory Committee (GPAC) for consideration in the coming months.⁴² In due course, PHMSA seems likely to finalize some version of a new gathering line rule. In fact, the very recent appointment of additional leadership at PHMSA might lead to further regulatory developments at the agency in the near term (please see related [Latham Client Alert](#)). Given the extent of potential changes in gas pipeline regulations applied to gathering pipelines, industry stakeholders should stay abreast of developments that could affect operations and investments as PHMSA evaluates recent comments and considers the proper boundary of its authority in this area. Latham will continue to closely monitor, assess, and anticipate pipeline-related regulation, law, and policy.

Latham's environmental and federal energy regulatory teams work closely with Latham's top-tier commercial and transactional practices to monitor, assess, and anticipate regulation, law, and policy impacting pipelines, investors, lenders, and other stakeholders. If you have questions about this *Client Alert*, or would like a markup of changes to PHMSA's gathering line regulations, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

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Endnotes

¹ Congress has provided PHMSA with the authority to prescribe minimum safety standards for pipeline transportation and for pipeline facilities. Congress identified specific factors PHMSA must take into account when issuing a standard for natural gas pipelines, including: (i) relevant available safety and environmental information; (ii) the appropriateness of the standard for the

particular type of pipeline; (iii) the reasonableness of the standard; (iv) and the reasonably identifiable or estimated benefits and costs. The fact that Congress set forth pipeline safety standards that may only be issued upon this multi-factored determination indicates that Congress anticipated an informed and measured process of regulation. 49 U.S.C. § 60102(b).

² Pipeline and Hazardous Materials Safety Administration, Pipeline Safety: Safety of Gas Transmission Pipelines, 81 Fed. Reg. 20,721 (April 8, 2016) (proposed rule); *see also* Pipeline and Hazardous Materials Safety Administration, Pipeline Safety: Safety of Gas Transmission Pipelines, 81 Fed. Reg. 29,830 (May 13, 2016) (extending comment period).

³ Notably, PHMSA is authorized to prescribe minimum safety standards for pipeline transportation and for pipeline facilities through both general and specific delegations of authority. For example, Section 23 of the Pipeline Safety Act authorizes PHMSA to require operators of transmission pipelines in Class 3 and 4 locations and Class 1 and 2 High Consequence Areas (HCAs) to “verify” their records to ensure that records accurately reflect the physical and operational characteristics of the pipelines and to confirm the established Maximum Allowable Operating Pressure (MAOP). 49 U.S.C. § 60139(a). Operators are required to report to PHMSA those pipeline segments for which records were insufficient to confirm the established MAOP. *Id.* § 60139(b)(1). And as noted herein, Section 21 of the Pipeline Safety Act directs PHMSA to conduct a review of the existing federal and state regulations for natural gas and hazardous liquids gathering lines.

⁴ Research and Special Programs Administration, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, 68 Fed. Reg. 62,555, 62,556 (Nov. 5, 2003). In the 1980s, inspectors from RSPA’s five regional offices had often found themselves in disagreements with pipeline operators across the nation over whether pipelines were appropriately classified — and regulated — as gathering or transmission lines. RSPA asked the National Association of Pipeline Safety Representatives (NAPSR), an association of state pipeline safety officials, for comments on the issue. NAPSR members from five states, with about 54% of gathering-line operators and 75% of the mileage, said they, too, had disagreements with operators over classifying pipelines as gathering lines or transmission lines. Members from three of these States said the disagreements were too numerous to list. One NAPSR member recalled many disagreements with two major gas gathering and transmission pipeline operators over where a gathering line ends. Another NAPSR member related continuing disagreements over the classification of various segments of pipeline operated by one of the largest gas gathering line operators in the United States. *Id.*

⁵ *See* Pipeline and Hazardous Materials Safety Administration, Notice of Public Meeting and Request for Comments, 68 Fed. Reg. 62,555 (Nov. 5, 2003); *See* Pipeline and Hazardous Materials Safety Administration, Gas and Hazardous Liquid Gathering Lines, 68 Fed. Reg. 67,129 (Dec. 1, 2003).

⁶ *See* Pipeline and Hazardous Materials Safety Administration Gas and Hazardous Liquid Gathering Lines, 69 Fed. Reg. 5,305 (Feb. 4, 2004).

⁷ *See* Pipeline and Hazardous Materials Safety Administration, Gas Gathering Line Definition; Alternative Definition for Onshore Lines and New Safety Standards, 71 Fed. Reg. 13,289, 13,290 (Mar. 15, 2006).

⁸ American Petroleum Institute Recommended Practice 80, Guidelines for the Definition of Onshore Gas Gathering Lines, at 2 (2000 ed.).

⁹ *Id.* at 13,289.

¹⁰ *Id.* at 13,290.

¹¹ RSPA was reorganized in 2005 into PHMSA.

¹² *See* Pipeline and Hazardous Materials Safety Administration Gas Gathering Line Definition; Alternative Definition for Onshore Lines and Proposed Safety Standards, 70 Fed. Reg. 57,536, 57,541 (Oct. 3, 2005).

¹³ *Id.* at 57,542.

¹⁴ *See* 71 Fed. Reg. at 13,293.

¹⁵ *Id.*

¹⁶ 49 C.F.R. § 192.3 (2017); *see also* 71 Fed. Reg. at 13,289.

¹⁷ *Id.* at 71. Fed. Reg at 13, 293.

¹⁸ 49 C.F.R. § 192.8(a).

¹⁹ *See* 71 Fed. Reg. 13,299-300.

²⁰ 49 C.F.R. § 192.8(b). The two general categories of regulated gathering lines are (i) Type A: an onshore gathering line (or segment of an onshore gathering line) made up of metallic pipe with an MAOP of at least 20% of SMYS, as well as nonmetallic lines with a Maximum Allowable Operation Pressure (MAOP) of more than 125 psig, if the pipe is located in a Class 2, 3, or 4 location; and (ii) Type B: an onshore gathering line (or segment of an onshore gathering line) made up of metallic pipe with an MAOP of less than 20% of SMYS, as well as nonmetallic lines with an MAOP of 125 psig or less, if the pipe is located in Class 2, 3, or 4 location. *Id.* Type A gathering lines are subject to nearly all of the requirements of Part 192 for transmission lines, except the requirements in Section 192.150 and in Subpart O. Type B gathering lines are subject only to six requirements specifically listed in Section 192.9(d). 49 C.F.R. § 192.9.

²¹ *See* 71 Fed. Reg. at 13,291.

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- ²² Pub. L. No. 112-90, 125 Stat. 1904, 125 Stat. at 1917 (Jan. 3, 2012).
- ²³ Pipeline and Hazardous Materials Safety Administration, Pipeline Safety: Safety of Gas Transmission Pipelines, 81 Fed. Reg. 20,721 (April 8, 2016); Pipeline and Hazardous Materials Safety Administration, Pipeline Safety: Safety of Gas Transmission Pipelines, 81 Fed. Reg. 29,830 (May 13, 2016).
- ²⁴ 81 Fed. Reg. at 20,801.
- ²⁵ *Id.*
- ²⁶ 81 Fed. Reg. at 20,828. The four endpoints proposed to be defined as follows: “(1) The inlet of 1st gas processing plant, unless the operator submits a request for approval to the Associate Administrator of Pipeline Safety that demonstrates, using sound engineering principles, that gathering extends to a further downstream plant other than a plant located on a transmission line and the Associate Administrator of Pipeline Safety approves such request; (2) The outlet of gas treatment facility that is not associated with a processing plant or compressor station; (3) Outlet of the furthestmost downstream compressor used to facilitate delivery into a pipeline, other than another gathering line; or (4) The point where separate production fields are commingled, provided the distance between the interconnection of the fields does not exceed 50 miles, unless the Associate Administrator of Pipeline Safety finds a longer separation distance is justified in a particular case (see § 190.9). *Id.*”
- ²⁷ *Id.*
- ²⁸ 81 Fed. Reg. at 20,826.
- ²⁹ 81 Fed. Reg. at 20,827.
- ³⁰ *Id.*
- ³¹ The PRIA is available in the docket (available online at <https://www.regulations.gov/docket?D=PHMSA-2011-0023>) as Comment No. PHMSA-2011-0023-0118.
- ³² Department of Transportation, Office of the Secretary of Transportation, Transportation Infrastructure: Notice of Review of Policy, Guidance, and Regulation, 82 Fed. Reg. 26,734, 26,735 (Jun. 8, 2017).
- ³³ Department of Transportation, Office of the Secretary of Transportation, Transportation Infrastructure: Notice of Review of Policy, Guidance, and Regulation, 82 Fed. Reg. 26,734, 26,735 (Jun. 8, 2017).
- ³⁴ *See, e.g.*, Comment Nos. DOT-OST-2017-0057-0174; DOT-OST-2017-0057-0145. One commenter also argues that the NPRM goes beyond PHMSA’s authority because the Pipeline Safety Act did not include gathering lines within its provisions regarding verification of MAOP for transmission lines in Class 3 and 4 locations, or High Consequence Areas (HCAs) in Class 1 and 2 locations, and PHMSA has not provided an adequate assessment of this proposal’s costs and benefits. *See* Comment No. DOT-OST-2017-0057-0174.
- ³⁵ *See, e.g.*, Comment No. DOT-OST-2017-0057-0145.
- ³⁶ Pipeline and Hazardous Materials Safety Administration, Safety of Hazardous Liquid Pipelines, 80 Fed. Reg. 61,610, 61,617 (Oct. 13, 2015) (“PHMSA believes that the requirements of the Pipeline Safety Act of 2011 and concerns for adequate regulatory oversight can only be addressed if PHMSA obtains additional information about gathering lines.”).
- ³⁷ 49 C.F.R. §§ 192.8, 192.9.
- ³⁸ 81 Fed. Reg. at 20,801-08.
- ³⁹ *See, e.g.*, Comment No. 0147 DOT-OST-2017-0057-0174.
- ⁴⁰ *Id.*
- ⁴¹ 49 U.S.C. § 60117(b).
- ⁴² By statute, PHMSA’s GPAC is charged with reviewing PHMSA’s proposed regulatory initiatives to confirm their technical feasibility, reasonableness, and cost effectiveness, and thus GPAC serves as an important body for the purposes of evaluating the agency’s most significant regulatory initiatives.