



VIA ELECTRONIC FILING

August 10, 2020

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Ave, S.E.
Washington, D.C. 20590

Re: Docket No. PHMSA-2018-0046, Pipeline Safety: Gas Pipeline Regulatory Reform

To Whom It May Concern:

On June 9, 2020, the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) published a notice of proposed of rulemaking (NPRM) in the *Federal Register* in this proceeding.¹ The NPRM contained proposed amendments to the federal gas pipeline safety standards in 49 C.F.R. Part 192 and reporting requirements in 49 C.F.R. Part 191. The stated purpose of the amendments according to the NPRM is to “ease regulatory burdens on the construction, operation, and maintenance of gas transmission, distribution, and gathering pipeline systems.”² GPA Midstream Association³ (GPA Midstream) appreciates the Agency’s efforts to reform the gas pipeline safety regulations and is submitting comments on three of the topics addressed in the NPRM: (1) incident reporting, (2) standards incorporated by reference (IBR standards), and (3) farm taps.⁴

¹ Pipeline Safety: Gas Pipeline Regulatory Reform, 85 Fed. Reg. 35,240 (Jun. 9, 2020).

² *Id.* at 35,241.

³ GPA Midstream has served the U.S. energy industry since 1921. GPA Midstream is composed of nearly 100 corporate members that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as “midstream activities.” Such processing includes the removal of impurities from the raw gas stream produced at the wellhead as well as the extraction for sale of natural gas liquid products (NGLs) such as ethane, propane, butane, and natural gasoline or in the manufacture, transportation, or further processing of liquid products from natural gas. GPA Midstream membership accounts for more than 90% of the NGLs produced in the United States from natural gas processing.

⁴ GPA Midstream notes that the Pennsylvania Independent Oil & Gas Association, Ohio Oil & Gas Association, Independent Oil and Gas Association of West Virginia, Kansas Independent Oil & Gas Association, and Independent Petroleum Association of America have all expressed their support for the comments provided in this letter relating to farm taps.

I. Incident Reporting

GPA Midstream supports PHMSA’s proposed changes to the incident reporting requirements in Part 191. An “incident” is currently defined in the regulations to include “[a]n event that involves a release of gas” and which causes “[e]stimated property damage of \$50,000 or more, including a loss to the operator and others, or both, but excluding the cost of gas lost[.]”⁵ As GPA Midstream explained in comments previously submitted to the Agency, PHMSA originally established the \$50,000 monetary threshold in 1984, and that amount has never been adjusted for inflation.⁶ The Agency proposed in the NPRM to increase the monetary threshold by using the Consumer Price Index at the time of publication of the final rule to account for inflation, and GPA Midstream supports that proposal. GPA Midstream also supports incorporating a mechanism for updating the monetary threshold every two years to account for inflation through direct final rulemaking.

II. IBR Standards

PHMSA currently incorporates all or parts of dozens of technical standards into Part 192 by reference, and the Agency is proposing to adopt certain new or updated standards in the NPRM.⁷ GPA Midstream generally supports incorporating standards by reference and believes that the latest editions should be adopted wherever possible.⁸ Relying on obsolete or outdated editions of IBR standards creates unnecessary compliance burdens, discourages innovation, and adversely affects the standards development process. GPA Midstream notes in that regard that a review of the IBR standards in Part 192 indicates that nearly two-thirds incorporate editions that are more than three years out of date. In fact, a significant number of the IBR standards have undergone multiple revisions without being updated to a newer or more recent edition. GPA Midstream urges PHMSA to place a renewed emphasis on the timeliness of the incorporation by reference process, particularly in cases where a prior edition of a standard is already incorporated by reference. In such cases, GPA Midstream requests that the Agency commit to adopting the latest edition of the standard or providing an explanation for not doing so within 1 year of publication.

III. Farm Taps

GPA Midstream does not support PHMSA’s statement in the NPRM that farm taps are gas distribution service lines starting at the first aboveground isolation point downstream from the source piping. As GPA Midstream recently explained in responding to the Agency’s draft Frequently Asked Questions (FAQs) for farm taps, there is no legal basis for using that point to delineate where a production, gathering, or transmission line ends and a gas distribution service line begins in a farm tap configuration. The definitions that apply in determining whether a

⁵ 49 C.F.R. § 191.3.

⁶ Transportation Infrastructure: Notice of Review of Policy, Guidance, and Regulation, 82 Fed. Reg. 26,734 (June 8, 2017), and Notification of Regulatory Review, 82 Fed. Reg. 45,750 (Oct. 2, 2017).

⁷ Pipeline Safety: Gas Pipeline Regulatory Reform, 85 Fed. Reg. at 35,249, 35,251-52.

⁸ The National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104-113, generally requires federal agencies to use technical standards that are developed or adopted by voluntary consensus standards bodies, unless doing so would be inconsistent with applicable law or is impracticable. *Id.* at 35,249. Moreover, as a result of recent amendments to the Pipeline Safety Act, the Agency can only incorporate technical standards or specifications by reference if that standard or specification is “made available to the public, free of charge.” 49 U.S.C. § 60102(p).

pipeline is a production, gathering, transmission, or distribution line do not refer to the first aboveground isolation point,⁹ and the other Part 192 regulations do not indicate that the first aboveground isolation point has any special significance in distinguishing between source and other piping in farm tap configurations. Furthermore, PHMSA has never used the first aboveground isolation point in evaluating the regulatory status of farm taps in any prior enforcement cases, guidance documents, or letters of interpretation, and the Agency does not point to any authority in the NPRM that supports that position.

As GPA Midstream also explained in responding to PHMSA's draft farm tap FAQs, applying the gas distribution service line regulations to piping downstream of the first aboveground isolation point imposes substantial costs without creating justifiable safety benefits, particularly for operators of non-jurisdictional production and gas gathering pipelines.¹⁰ Non-jurisdictional operators do not have a legal obligation to establish programs or procedures for complying with the safety standards or reporting requirements in the Agency's regulations. By suggesting that farm tap piping downstream from the aboveground first isolation point is part of a gas distribution service line, PHMSA is trying to create an entirely new set of legal obligations for non-jurisdictional pipeline operators in a proceeding that is ostensibly designed to provide "regulatory relief." Midstream companies that operate regulated gathering or transmission pipelines will experience similar unnecessary burdens. While these companies have Part 192 compliance programs in place, the requirements for regulated gas gathering and transmission lines are not the same as the requirements for regulated gas distribution lines.¹¹

GPA Midstream urges PHMSA to acknowledge in the final rule that operators can exercise reasonable discretion in determining where source piping ends and distribution service line piping, if any, begins in farm tap configurations. A service line can begin at a valve, regulator, meter, or other component, or at the point where custody of the gas transfers to the customer or another pipeline operator, depending on the particular configuration. There may also be situations where a production, gathering, or transmission line delivers gas directly to a customer without passing through a service line. This interpretation is consistent with the text, structure, and history of Part 192, which generally uses a functional approach in determining whether a pipeline is a production,

⁹ 49 C.F.R. § 192.3 (defining gathering line, transmission line, and distribution line, including main and service line); 49 C.F.R. §§ 192.8(a) (requiring operators to follow the provisions in API Recommended Practice 80, "Guidelines for the Definition of Onshore Gas Gathering Lines," 1st edition, April 2000 (RP 80) in determining if a pipeline is an onshore gas gathering line, subject to certain limitations); RP 80 §§ 2.2 (defining onshore gathering line), 2.3 (defining production operation), 2.4 (supplemental definitions).

¹⁰ In the case of production and gathering lines, most farm tap agreements make clear that the landowner or free gas user is responsible for installing, operating, and maintaining the piping and equipment downstream from the interconnect. Production and gathering line operators do not own, operate, control, or exercise any legal authority over that piping or equipment under the terms of these agreements. Moreover, farm tap agreements have generally been viewed as creating private contractual obligations that are not subject to regulation for public utility purposes. *See e.g., Adams v. Pub. Util. Comm'n*, 819 A.2d 631 (Pa. Commw. Ct. 2003). The production and gathering line operators that deliver the gas are not treated as public utilities, and the landowners that receive the gas are not treated as ratepayers. These distinctions are important in evaluating the costs, benefits, and economic impacts of applying the gas distribution service line regulations to non-jurisdictional production and gathering line operators.

¹¹ For example, the regulations for customer meters, service regulators, and excess flow valves do not apply to regulated gathering or transmission lines, and the maximum allowable operating pressure and odorization requirements for regulated gathering and transmission lines are different than the comparable requirements for gas distribution lines.

gathering, transmission, or distribution line, and allows operators to account for the wide variety of farm tap configurations that exist throughout the country.

Assuming that the Agency clarifies that the first aboveground isolation point is not controlling in determining the regulatory status of farm tap piping, GPA Midstream supports providing further regulatory relief to pipeline operators. Specifically, PHMSA should amend Part 192 to allow operators of regulated gathering and transmission lines to treat any pipeline that exists in a farm tap configuration as part of the regulated source piping for purposes of the gas pipeline safety standards, reporting, drug and alcohol, and other requirements.¹² Providing regulated pipeline operators with that flexibility eliminates the unnecessary compliance burdens that arise from applying the gas distribution regulations to piping that represents a negligible portion of the operator's overall pipeline assets. Accordingly, GPA Midstream proposes that PHMSA add the following new regulation to the general requirements in Subpart A of Part 192:

§192.17 Farm Taps

An operator may treat a pipeline that delivers gas directly to a farm tap customer from a regulated onshore gathering line or transmission line as part of that gathering or transmission line for purposes of the requirements in this part and the other requirements in this chapter.

The Agency should also amend the regulations to clarify that Part 192 does not apply to farm tap piping that originates on non-jurisdictional production and gathering lines. Acknowledging that Part 192 does not apply in these circumstances eliminates the unnecessary compliance burdens that result from applying the gas distribution regulations to piping that is otherwise part of a non-jurisdictional production or gathering system. Therefore, GPA Midstream proposes that the Agency add the following exception at the end of the scope requirements in Subpart A of Part 192:

§192.1 What is the scope of this part?

(a) . . .

(b) This part does not apply to—

¹² GPA Midstream notes that commenters in a prior rulemaking proceeding asked PHMSA to make similar changes to Part 192. See Interstate Natural Gas Association of America at 11, Docket No. PHMSA-2013-0163 (Sept. 8, 2015) <https://www.regulations.gov/document?D=PHMSA-2013-0163-0032> (Sept. 9, 2015); See also, Kinder Morgan, Inc. at 9 (Sept. 8, 2015), <https://www.regulations.gov/document?D=PHMSA-2013-0163-0047>. The Agency declined to adopt those changes in that proceeding, indicating that the compliance requirements for farm taps needed to be uniform for enforcement purposes. Pipeline Safety: Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Changes, 82 Fed. Reg. 7,972, 7,984, 7,985 (Jan. 23, 2017). Regardless of whether GPA Midstream agreed with the rationale that PHMSA provided at that time, the amendments proposed in the NPRM, which would allow operators to manage inspections of pressure regulators serving farm taps either under the transmission requirements of § 192.740 or a distribution integrity management plan, demonstrate that the emphasis on uniformity is no longer controlling. Pipeline Safety: Gas Pipeline Regulatory Reform, 85 Fed. Reg. at 35,242. The Agency should acknowledge that fact and advance the stated purpose of this proceeding by allowing operators to treat farm tap service lines as part of the source piping.

(1) . . .

(6) Pipelines that deliver gas directly to a farm tap customer from an onshore production or gathering line that is not subject to the requirements in this part.

PHMSA should similarly clarify that the reporting and registration requirements in Part 191 do not apply to farm tap piping that originates on non-jurisdictional production and gathering lines. Applying Part 191 to piping that is otherwise part of a non-jurisdictional production or gathering line creates unnecessary compliance burdens, particularly for operators that do not have any other regulated pipelines. For these reasons, GPA Midstream proposes that the Agency add the following exception at the end of the scope provision for Part 191:

§191.1 Scope.

(a) . . .

(b) This part does not apply to—

(1) . . .

(5) Pipelines that deliver gas directly to a farm tap customer from an onshore production or gathering line that is not subject to the requirements in part 192 of this chapter.

With regard to other potential clarifications, GPA Midstream notes PHMSA’s prior guidance indicates that a farm tap customer is a landowner or other party receiving gas for residential or agricultural use directly from a pipeline pursuant to the terms of a right-of-way, lease, or other similar written agreement. GPA Midstream further notes that a large volume customer, *e.g.*, a factory, power plant, or other institutional user of gas, does not meet the definition of a farm tap customer under that previous guidance. In an effort to eliminate any uncertainty in the future, GPA Midstream would support the addition of the following new definition in Part 192:

§192.3 Definitions.

As used in this part:

Farm tap customer means a landowner or other party that receives gas for residential or agricultural use directly from a pipeline pursuant to the terms of a right-of-way, lease, or other similar written agreement.

As for the other changes proposed in the NPRM, GPA Midstream is not opposed to providing regulated pipeline operators with additional flexibility in operating and maintaining farm tap piping. However, GPA Midstream notes that if the Agency adds the suggested exception to the scope provision in § 192.1(b)(6), there is no need for the subsequent exceptions to the inspection and testing requirements in 49 C.F.R. § 192.740 and the distribution integrity

management requirements in 49 C.F.R. § 192.1003(b)(1) for pipelines that deliver gas directly from non-jurisdictional production or gathering lines to farm tap customers (as none of the requirements in Part 192 would apply to these lines). GPA Midstream also notes that if PHMSA adds the suggested exception to the scope provision in § 191.1(b)(5), there is no need for the exception from the distribution annual reporting requirements in § 191.11(b) for pipelines that deliver gas directly from non-jurisdictional production or gathering lines to farm tap customers (as none of the reporting and registration requirements in Part 191 would apply to these lines).

IV. Conclusion

GPA Midstream appreciate the opportunity to submit comments in response to the NPRM. If you have any questions, please feel free to contact me at 202-279-1664 or mhite@gpamidstream.org.

Sincerely,

A handwritten signature in black ink that reads "Matthew Hite". The signature is written in a cursive, flowing style.

Matthew Hite
Vice President of Government Affairs
GPA Midstream Association
(202) 279-1664
mhite@gpamidstream.org