



VIA ELECTRONIC FILING

October 18, 2019

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

Re: Docket No. PHMSA-2016-0136: June 25-26, 2019 Gas Pipeline Advisory Committee Meeting; Gathering Line Operator Participation in the National Pipeline Mapping System

To Whom It May Concern:

On June 25 to 26, 2019, the Gas Pipeline Advisory Committee (GPAC or Committee) held a public meeting¹ to consider the Pipeline and Hazardous Materials Safety Administration's (PHMSA or Agency) notice of proposed rulemaking (NPRM) for onshore gas gathering lines.² During that meeting, the GPAC briefly discussed whether PHMSA has the authority to require gathering line operators to submit geospatial information to the National Pipeline Mapping System (NPMS).³ Certain GPAC members expressed the view that the Agency has that authority, even though the statutory provision authorizing the NPMS program includes an express exception for gathering lines.⁴ The same Committee members also expressed support for making a recommendation to the Secretary of Transportation asking Congress to remove that exception in the event that PHMSA is prohibited from requiring gathering line operators to participate in the NPMS.⁵

GPA Midstream Association (GPA Midstream)⁶ is submitting this comment letter to respond to the GPAC's discussion. As explained in more detail below, the Pipeline Safety Act

¹ Notice of Advisory Cmte. Mtg., 84 Fed. Reg. 14,724 (April 11, 2019).

² Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. 20,722 (Apr. 8, 2016).

³ Gas Pipeline Advisory Cmte. Transcript for June 25-26, 2019 (PHMSA-2016-0138-0049) 82-89, 121-39 (July 16, 2019) (hereinafter "GPAC Transcript").

⁴ 49 U.S.C. § 60132(a).

⁵ GPAC Transcript at 82-89, 121-39.

⁶ 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

clearly prohibits PHMSA from requiring gathering line operators to participate in the NPMS. The statute authorizing the NPMS program contains an express exception for gathering lines, and the Agency has no choice but to give that exception its full and intended effect. The GPAC also lacks the unilateral authority to make legislative proposals to the Secretary of Transportation. The Secretary has the sole and exclusive authority to decide whether the GPAC should provide policy recommendations, and the Secretary has not asked the Committee (or, for that matter, the Congress) to take any action concerning the NPMS statute.

Finally, and perhaps most importantly, the gathering line exception in the NPMS statute continues to serve important policy objectives. The Agency and Congress have consistently found that gathering line operators should not be required to participate in federal pipeline mapping programs, and there is no indication that changing this longstanding policy would make a meaningful improvement in public safety, particularly given the significant costs that would be imposed on the midstream industry.

I. The Pipeline Safety Act clearly and unmistakably prohibits PHMSA from requiring gathering line operators to participate in the NPMS.

PHMSA “must give effect to the unambiguously expressed intent of Congress” in administering the Pipeline Safety Act.⁷ As the U.S. Supreme Court has explained, traditional tools of statutory construction are of paramount importance in determining congressional intent.⁸ Dictionary definitions should be consulted to understand the plain and ordinary meaning of a term.⁹ The use of a term in the broader statutory context, including in other provisions, should be considered as well.¹⁰ Additional sources of authority, such as the legislative history, may also be relevant.¹¹

PHMSA’s authorization to administer the NPMS program is codified at 49 U.S.C § 60132. Subsection (a) of § 60132 states, in relevant part, that “the operator of a pipeline facility (except distribution lines and gathering lines)” shall submit geospatial data and other information to the NPMS.¹² The legislative and regulatory history of § 60132(a) indicates that the exception for

(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. See <https://gpaglobal.org/>.

⁷ *Chevron, U.S.A., Inc. v. Nat. Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (June 25, 1984).

⁸ *Id.* See also *Kisor v. Willkie*, 139 S. Ct. 2400, 2415 (2019).

⁹ *Muscarello v. United States*, 524 U.S. 125, 128 (1998); see also *U.S. v. Smith*, 756 F.3d 1070, 1073 (8th Cir. June 27, 2014) (“As in all such cases, we begin by analyzing the statutory language,” *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251, 130 S.Ct. 2149, 176 L.Ed.2d 998 (2010), “giv[ing] words their ‘ordinary, contemporary, common meaning’ unless they are otherwise defined in the statute itself”)

¹⁰ *Ratzlaf v. United States*, 510 U. S. 135, 143 (1994) (“A term appearing in several places in a statutory text is generally read the same way each time it appears”); *Hamdan v. Rumsfeld*, 548 U.S. 557, 578 (2006).

¹¹ *Milner*, 562 U.S. at 574 (“Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it.”).

¹² 49 U.S.C. § 60132(a). None of the other provisions in the NPMS statute affects the language of the exception for gathering lines in subsection (a). Subsection (b) requires “[a] person providing information under subsection (a)” to

distribution and gathering lines dates back to a voluntary digital pipeline mapping program that PHMSA created in the late 1990s.¹³ Congress included an analogous exception for distribution and gathering lines in Section 15 of the Pipeline Safety and Improvement Act of 2002 (2002 Act), which required operators of pipeline facilities to submit geospatial data and other information to the NPMS.¹⁴ The original language from the 2002 Act remains codified in § 60132(a) and has not been altered by Congress in three subsequent reauthorizations of the Pipeline Safety Act.¹⁵

Congress clearly intended PHMSA to apply the plain and ordinary meaning of “except”—“to take or leave out from a number or a whole[,]” or to “exclude”¹⁶—in administering § 60132(a). As with other provisions in the Pipeline Safety Act, the word “except” is used in § 60132(a) in the exclusionary sense, *i.e.*, distribution lines and gathering lines are “taken out” from the broader “whole” of pipeline facilities subject to the NPMS program requirements.¹⁷ That is evident from the parenthetical reference that Congress used in § 60132(a), which mirrors other exceptions in the Pipeline Safety Act that provide exclusions for particular kinds or categories of pipeline facilities.¹⁸ It is also confirmed by the legislative and regulatory history, which shows that the Agency

update that information as necessary “to reflect changes . . . and as otherwise required by the Secretary.” *Id.* at (b). Subsection (c) authorizes the Secretary to provide NPMS-related technical assistance to state and local governments, and subsection (d) requires the Secretary to maintain and update biennially a map depicting high consequence areas in the NPMS. *Id.* at (c)-(d). Finally, subsection (e) requires the Secretary to develop a public awareness program for the NPMS, and subsection (f) includes provision relating to the disclosure of information. *Id.* at (e)-(f).

¹³ National Pipeline Mapping System, 63 Fed. Reg. 36,030, 36,031 (July 1, 1998) (noting that the proposed voluntary national pipeline mapping system does “not include information on gas service lines, gas distribution lines, gathering lines, flow lines, or spur lines”).

¹⁴ Pipeline Safety and Improvement Act of 2002, Pub. L. 107–355, § 15, 116 Stat. 2985, 3005–06 (2002) (codified at 49 U.S.C. § 60132).

¹⁵ Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, Pub. L. 109–468, 120 Stat. 3486 (2006); Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. 112–90, 125 Stat. 1904 (2012); Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016, Pub. L. 114–183, 130 Stat. 514 (2016).

¹⁶ Merriam-Webster, *Except / Definition of Except*, MERRIAM-WEBSTER.COM, (October 3, 2019, 1:30 PM), <https://www.merriam-webster.com/dictionary/except?src=search-dict-box>.

¹⁷ The word “except” appears 23 times in Chapter 601 and one time in Chapter 603. In addition to 49 U.S.C. § 60132(a)(1), there at least six other instances where “except” is used in the exclusionary sense, and in four of those instances Congress embedded that exception in a parenthetical reference that followed the more expansive term. *See* 49 U.S.C. §§ 60101(a)(12) (“liquefied natural gas incident means a release, burning or explosion...except a release burning or explosion that...does not pose a threat”), (a)(16) (“new liquefied natural gas pipeline facility means a liquefied natural gas pipeline facility except an existing liquefied natural gas pipeline facility”), (a)(22)(B)(i) (transporting hazardous liquid does not include “gathering lines (except regulated gathering lines) in a rural area”), 60102(h) (“The Secretary shall prescribe regulations requiring each operator of a pipeline facility (except a master meter”), 60103(g) (“This section does not preclude applying a standard prescribed under section 60102 of this title to a gas pipeline facility (except a liquefied natural gas pipeline facility”), 60109(a)(1)(A) (“each gas pipeline facility (except a natural gas distribution line) located in a high-density population area”).

¹⁸ *See* 49 U.S.C. §§ 60101(a)(22)(B)(i) (transporting hazardous liquid does not include “gathering lines (except regulated gathering lines) in a rural area”), 60102(h) (“The Secretary shall prescribe regulations requiring each operator of a pipeline facility (except a master meter”), 60103(g) (“This section does not preclude applying a standard prescribed under section 60102 of this title to a gas pipeline facility (except a liquefied natural gas pipeline facility”), 60109(a)(1)(A) (“each gas pipeline facility (except a natural gas distribution line) located in a high-density population area”).

excluded gathering and distribution lines from the digital mapping program that formed the basis for the NPMS, and that Congress included an exception to that effect in the 2002 Act.

Contrary to the views of certain GPAC members, there is no reasonable argument that PHMSA has the discretion to require gathering line operators to participate in the NPMS.¹⁹ The plain language of the Pipeline Safety Act forecloses that interpretation,²⁰ and the Agency cannot circumvent the exception in § 60132(a) by relying on the information collection authority provided in other statutory provisions.²¹ Doing so would allow PHMSA to “exercise its authority ‘in a manner that is inconsistent with the administrative structure that Congress enacted into law[.]’”²² It would also permit PHMSA to exercise a power that the Agency itself has consistently maintained it does not possess.²³ For these reasons, PHMSA cannot require gathering line operators to participate in the NPMS.

II. The GPAC does not have the unilateral authority to make policy recommendations to the Secretary about amendments to the NPMS statute.

The organization, roles, and responsibilities of the GPAC are codified at 49 U.S.C. § 60115. While the primary function of the GPAC is to evaluate and submit reports on PHMSA’s proposed changes to the gas pipeline safety regulations, § 60115(d) authorizes the Committee to take two additional kinds of action. First, the GPAC can propose gas pipeline safety standards to the Secretary for consideration.²⁴ Second, the Committee, “[i]f requested by the Secretary, . . . shall make policy development recommendations to the Secretary.”²⁵

¹⁹ Congress certainly knows how to give PHMSA the authority to make discretionary decisions relating to the regulation of gathering lines. For example, Congress gave PHMSA the authority to “consider” certain factors in defining the term “gathering line” and establishing safety standards for “regulated gathering line[s].” 49 U.S.C. §§ 60101(b)(1)(B)(ii), (b)(2)(B). Congress also provided that PHMSA “may require owners and operators of gathering lines to provide the Secretary information pertinent to the Secretary’s ability to make a determination as to whether and to what extent to regulate gathering lines.” 49 U.S.C. § 60117(b). The fact that Congress used permissive or discretionary language in these provisions, but not in § 60132(a), confirms that the exception for gathering lines in the NPMS statute should be interpreted as a mandatory, non-discretionary exclusion.

²⁰ *Zuni Pub. School Dist. No. 89 v. Dep’t of Educ.*, 550 U.S. 81, 93 (2007).

²¹ *Food and Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125 (2000).

²² *Id.* (concluding that Congress “clearly precluded the FDA from asserting jurisdiction to regulate tobacco products.”).

²³ Since the passage of the 2002 Act, PHMSA’s regulations and guidance documents have consistently acknowledged that gathering line operators are not subject to the NPMS program requirements. PHMSA, National Pipeline Mapping System, Standards for Pipeline, Liquefied Natural Gas and Breakout Tank Farm Operator Submissions (Oct. 2017), https://www.npms.phmsa.dot.gov/Documents/Operator_Standards.pdf. In fact, PHMSA recently proposed amendments to the NPMS regulations that make the exemption for gathering line operators even more explicit. Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. 20,722, 20,824 (Apr. 8, 2016) (proposing to add subsection (c) to § 191.29 that would state “this section does not apply to gathering lines.”). Also, in the June 25, 2019, GPAC meeting, PHMSA recognized that the statute “specifically exempts . . . gathering lines.” PHMSA noted that they would review the provision, but that the exemption was “pretty clear.” GPAC Transcript, June 25, 2019 at 291:6-11.

²⁴ 49 U.S.C. § 60115(d)(1).

²⁵ *Id.* at (d)(2). In 1992, Congress added the provision that allows the Secretary to request that the Committee make recommendations pertaining to policy development. Pipeline Safety Act of 1992, Pub.L. No. 102-508, § 105, 106 Stat. 3289, 3293 (1992).

The GPAC's charter provides further clarity in that respect.²⁶ Consistent with § 60115(d), section 3(d) of the Charter provides that:

The Committee may propose safety standards for gas pipeline facilities to the [Designated Federal Officer (DFO), the Associate Administrator for Pipeline Safety,] for consideration. The Committee may review and report on other matters related to [the Department of Transportation's] pipeline safety rulemaking function as presented by the DFO. The Committee may also be requested by the DFO to make recommendations concerning policy development.²⁷

As the provisions in § 60115(d) and section 3(d) of the Committee's charter make clear, the GPAC does not have the unilateral authority to make legislative recommendations. The Secretary has the sole and exclusive authority to ask the Committee for policy recommendations, and GPA Midstream is not aware of any Secretarial request directing the GPAC to develop a proposal for amending the NPMS statute. To the contrary, the Secretary released a proposed bill for reauthorizing the Pipeline Safety Act several months ago, and that proposal did not include any changes to the NPMS provision.²⁸ If the Secretary wanted the Committee's input on the NPMS program (or any other potential amendments to the Pipeline Safety Act), she presumably would have made that request before releasing her legislation. GPA Midstream notes that the desire of certain Committee members to offer unsolicited legislative recommendations seems particularly inappropriate in this case, because the Secretary's views on pipeline safety reauthorization are already firmly established.

III. The exception for gathering line operators in the NPMS statute continues to serve important policy objectives.

The overwhelming majority of gathering line mileage in the United States is located entirely in rural areas. Rural gathering lines present a minimal risk to public safety and have traditionally been outside the reach of PHMSA's regulations.²⁹ Unlike operators of transmission pipelines or liquefied natural gas facilities, which have been subject to the Agency's jurisdiction for decades, operators of rural gathering lines do not have a long history of complying with PHMSA's regulations and may not have access to the information or technology necessary to participate in the NPMS program. Requiring rural gathering line operators to participate in the

²⁶Technical Pipeline Standards Committee Charter, PHMSA (Oct. 3, 2019, 2:01 PM), <https://www.phmsa.dot.gov/standards-rulemaking/pipeline/gas-pipeline-advisory-committee-gpac-charter-october-2018-october-2020>.

²⁷ *Id.*

²⁸ Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2019 Legislative Proposal, Transportation Dept. (June 3, 2019) (accessed online at https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/news/71476/2019-pipeline-safety-reauthorization_0.pdf on Oct. 3, 2019, 2:07 PM)

²⁹ 49 U.S.C. §§ 60101(a)(21)-(22); 49 C.F.R. §§ 192.8(b), 195.1(b)(4).

NPMS program would represent a dramatic departure from the historical norm and impose significant costs on the industry.

Nor is there any indication that such action is necessary. Most gathering line operators already provide appropriate pipeline location information to the authorities responsible for administering state damage prevention programs. These state programs play a critical role in promoting public safety by reducing third-party damage to pipeline facilities, but do not generally require information to be submitted in a GIS format or with the level of detail that PHMSA is currently seeking from operators of transmission lines in the NPMS program.³⁰ Imposing an additional burden on gathering line operators to provide geospatial data solely for informational purposes is simply not justified, particularly given the effectiveness that state damage prevention programs have shown in protecting legitimate risks to public safety.

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GPA Midstream appreciates the opportunity to submit comments responding to the GPAC's discussion about requiring gathering line operators to participate in the NPMS. If you have any questions or concerns about the information provided in this letter, please feel free to contact me at (202) 279-1664 or by email at mhite@GPAglobal.org.

Sincerely,



Matthew Hite
Vice President of Government Affairs
GPA Midstream Association

³⁰ Pipeline Safety: Request for Revision of a Previously Approved Information Collection: National Pipeline Mapping System Program, 84 Fed. Reg. 14,717, 14,723 (Apr. 11, 2019). PHMSA is currently seeking approval from the Office of Management and Budget to collect data on the following pipeline attributes in the NPMS: pipe diameter, wall thickness, commodity details, pipe material, pipe grade, pipe join material, seam type, decade of installation, coating, onshore or offshore designation, in-line inspection capability, most recent assessment method and year, class location, gas high consequence area (HCA), could affect HCA segment, facility response plan sequence numbers, and abandoned pipelines.