



September 30, 2019

U.S. DOT Docket Management System
Docket No. PHMSA-2011-0023
U.S. Department of Transportation
West Building Ground Floor
Room W12-140
1200 New Jersey Ave., SE
Washington, DC 20590

RE: Supplemental Comment of the GPA Midstream Association and American Petroleum Institute on “Pipeline Safety: Safety of Gas Gathering Pipelines,” RIN 2137-AF38, June 2019 Gas Pipeline Advisory Committee Meeting

The GPA Midstream Association (GPA)¹ and American Petroleum Institute (API)² are submitting this supplemental comment letter to respond to the Gas Pipeline Advisory Committee’s (GPAC)³ recommendations on the Pipeline and Hazardous Materials Safety Administration’s (PHMSA or Agency) proposed rule for onshore gas gathering lines.⁴ PHMSA published the proposed rule in the *Federal Register* on April 8, 2016, as part of a notice of proposed rulemaking (NPRM) that also contained provisions for gas transmission lines. After publishing the NPRM, the Agency decided to separate the proposals and pursue the gas gathering provisions in a

¹ GPA has served the U.S. energy industry since 1921 and is composed of nearly 100 corporate members 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.

² API is the national trade association representing all facets of the oil and natural gas industry, which supports 10.3 million U.S. jobs and 8 percent of the U.S. economy. API’s more than 625 members include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms. They provide most of the nation’s energy and are backed by a growing grassroots movement of more than 25 million Americans.

³ 49 U.S.C. § 60115(c) (2017).

⁴ Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. 20,722 (Apr. 8, 2016).

standalone proceeding.⁵ This comment letter focuses solely on PHMSA's proposed changes to the gathering line regulations.

I. Introduction

The Agency proposed to make significant changes to the gas gathering line regulations in the NPRM. Specifically, PHMSA proposed to repeal the industry standard that is incorporated by reference, API Recommended Practice 80, "Guidelines for the Definition of Onshore Gas Gathering Lines," 1st edition, April 2000, (RP 80), and adopt new definitions for onshore gas gathering lines. The Agency also proposed to apply new safety standards to high-stress, Class 1 gas gathering lines 8 inches or greater in diameter⁶ and to extend the federal reporting requirements to all gas gathering lines, whether regulated or not.⁷

After reviewing the public comments, PHMSA decided to present a modified proposal to the GPAC for consideration.⁸ The Agency advised the GPAC of its intention to withdraw the changes proposed in the NPRM and retain the current gathering definitions. PHMSA further indicated that it wanted to regulate high-stress, Class 1 gas gathering lines greater than 12 inches in diameter, and to provide an exception for pipelines 16 inches or less in diameter that do not contain any buildings intended for human occupancy or other impacted sites within the potential impact radius (PIR). Finally, the Agency stated it only intended to apply the incident and annual reporting requirements to unregulated gas gathering lines.

As explained in more detail below, the GPAC voted in favor of PHMSA's proposals to retain the current gathering definitions and extend the incident and annual reporting requirements to unregulated gathering lines.⁹ However, the GPAC went beyond the Agency's proposal and recommended that PHMSA consider establishing new safety standards for Class 1 gas gathering lines 8 inches or greater in diameter. The GPAC also recommended that PHMSA consider using the PIR concept in determining whether additional safety standards should apply to larger diameter gas gathering lines. GPA and API are submitting this supplemental comment letter to express its views on the GPAC's recommendations.

II. Executive Summary

- GPA and API agree that the definitions for onshore gas gathering lines should remain in effect until API completes its efforts to develop a revised edition of RP 80 and a new

⁵ On March 26, 2018, PHMSA advised the GPAC of its decision to separate the NPRM into three separate final rules for the remainder of the rulemaking process. Gas Rule Split-Out Slides, <https://primis.phmsa.dot.gov/meetings/FilDown.mtg?fil=967>.

⁶ Please note that all references to pipe diameter in this comment letter reflect the nominal diameter of the pipe, not the outside diameter. In other words, the reference to 8-inch diameter pipe is 8-inch nominal diameter pipe, which is 8.625 inches in outside diameter. The reference to 12-inch diameter pipe is 12-inch nominal pipe, which is 12.75 inches in outside diameter. Note that the nominal and outside diameter is the same for pipe 14 inches in diameter and greater.

⁷ Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. at 20,801-806, 20,827-828.

⁸ PHMSA, Gas Pipeline Advisory Committee Pre-Briefing (June 19, 2019), <https://primis.phmsa.dot.gov/meetings/FilGet.mtg?fil=1040>.

⁹ Gas Gathering Voting Slides (June 25-26, 2019), <https://primis.phmsa.dot.gov/meetings/FilDown.mtg?fil=1069>.

recommended practice for large diameter gas gathering lines in Class 1 locations. GPA and API also agree that the Agency's incident and annual reporting requirements should be applied to all gas gathering lines, whether regulated or not. GPA and API expressed support for these positions prior to the GPAC meeting and are pleased that the various stakeholders reached a consensus in that regard.

- GPA and API support PHMSA's recommendation to assert jurisdiction over high-stress, Class 1 gas gathering lines greater than 12 inches in diameter. Pipelines with these characteristics generally represent the new generation of shale gas gathering lines that the Agency expressed an interest in regulating at the outset of this proceeding. While API has not reached a consensus position on the issue, GPA believes that the PIR limitation should apply to lines that are 24 inches or less in diameter. GPA believes that there is no basis in the record to support PHMSA's proposed 16-inch-diameter limitation, and that applying the PIR provision to larger diameter pipelines will create a framework for regulating Class 1 gas gathering lines that is risk-based, technically-sound, and cost-effective.
- Finally, and perhaps most importantly, GPA and API urge PHMSA to reject the GPAC's recommendation to consider establishing new safety standards for Class 1 gas gathering lines that are 12 inches or less in diameter. The GPAC failed to fulfill its statutory obligations in making that recommendation, and the record does not support extending the Agency's jurisdiction to these smaller diameter gas gathering lines. While GPA and API are willing to support other initiatives that further PHMSA's goal of establishing reasonable, risk-based safety standards for gas gathering lines, the only prudent course of action in this proceeding is for the Agency to reject the GPAC's recommendation.

III. Background

In April 2016, PHMSA published the NPRM proposing to change the safety standards and reporting requirements for gas gathering lines in 49 C.F.R. Parts 191 and 192.¹⁰ The proposed changes included (1) repealing RP 80, the industry standard for defining onshore gas gathering operations that is incorporated into Part 192 by reference, and adopting new definitions by regulation; (2) applying certain safety standards to gas gathering lines in Class 1 locations that are 8 inches or greater in nominal diameter and which have a maximum allowable operating pressure (MAOP) that produces a hoop stress of 20 percent or more of specified minimum yield strength (SMYS) (for metallic lines) or is more than 125 PSIG (for non-metallic lines); (3) adding exceptions to the safety standards for currently-regulated Type A gathering lines to accommodate other proposed changes to the transmission line regulations; and (4) applying the reporting requirements in Part 191 to operators of all gathering lines, whether regulated or not.¹¹

¹⁰ Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. 20,721.

¹¹ *Id.* at 20,827-20,828. As the primary support for these proposals, PHMSA pointed to recent changes in the operating parameters of gas gathering lines in the nation's shale plays, as well as concerns with the enforcement and application of API RP 80. *Id.* at 20,801-20,808. PHMSA also asserted that its proposals were consistent with a 2010 National Association of Pipeline Safety Representatives resolution and more recent U.S. Government Accountability Office recommendations relating to gas gathering lines. *Id.* at 20,808; PHMSA, Preliminary Regulatory Impact Assessment

In July 2016, GPA, API, and other industry stakeholders submitted comments responding to the NPRM.¹² The industry commenters were generally opposed to PHMSA's proposals, stating that the changes would adversely impact producers and gatherers by extending the Agency's jurisdiction closer to the wellhead, requiring the widespread reclassification of pipeline facilities, and imposing unduly burdensome regulations and reporting requirements. The industry commenters further indicated that PHMSA's Preliminary Regulatory Impact Assessment (PRIA) significantly underestimated the costs—and significantly overestimated the benefits—of the NPRM's gas gathering proposals. While the PRIA estimated that the costs would exceed the benefits by approximately \$1 million over the initial 15-year compliance period, an independent economic analysis submitted by API showed that the costs would exceed the benefits by more than \$28 billion over that same period.¹³ API's independent economic analysis further found that the NPRM would have a disproportionate economic impact on small operators, leading to annual compliance costs that would consume about 90% of the revenue generated by small gathering companies.

In early December 2018, GPA and API filed a joint position paper with PHMSA in anticipation of the GPAC's review of the NPRM.¹⁴ API and GPA reiterated that they did not support repealing RP 80 and adopting new gathering definitions. API and GPA also expressed support for extending certain safety standards to Class 1 gathering lines, but asked PHMSA to limit those provisions to higher-stress pipelines greater than 16 inches in diameter and to incorporate other risk-based concepts to make the regulations more efficient and cost effective. GPA submitted a separate letter on the latter point urging PHMSA to provide an exception for Class 1 gas gathering lines that did not contain any buildings intended for human occupancy or identified sites within the PIR.¹⁵ Finally, API and GPA asked PHMSA to limit the applicability of the federal reporting requirements for unregulated Class 1 gathering lines to incident and annual reports only.

at 101 (Mar. 2016) (PRIA), <https://www.regulations.gov/document?D=PHMSA-2011-0023-0117>. See U.S. Gov't Accountability Off., GAO-12-388, PIPELINE SAFETY: Collecting Data and Sharing Information on Federally Unregulated Gathering Pipelines Could Help Enhance Safety (Mar. 2012); U.S. Gov't Accountability Off., GAO-14-667, OIL AND GAS TRANSPORTATION: Department of Transportation Is Taking Actions to Address Rail Safety, but Additional Actions Are Needed to Improve Pipeline Safety (Aug. 2014).

¹² Comments of GPA Midstream Ass'n, Docket No. PHMSA-2011-0023 (July 7, 2016), <https://www.regulations.gov/document?D=PHMSA-2011-0023-0290>; Comments of American Petroleum Institute, Docket No. PHMSA-2011-0023 (July 7, 2016), <https://www.regulations.gov/document?D=PHMSA-2011-0023-0381> (API Comments).

¹³ API Comments.

¹⁴ API and GPA, Joint Position Paper, Docket No. PHMSA-2011-0023 (Dec. 4, 2018), <https://www.regulations.gov/document?D=PHMSA-2011-0023-0452>. A copy of the joint position paper is included as an attachment. API and GPA also submitted a joint clarification letter on December 6, 2018, <https://www.regulations.gov/document?D=PHMSA-2011-0023-0454>, which is also included as an attachment.

¹⁵ GPA, Supplemental Comments (Dec. 4, 2018), <https://www.regulations.gov/document?D=PHMSA-2011-0023-0453>. GPA explained that the addition of a PIR exception would be consistent with PHMSA's integrity management (IM) regulations for gas transmission lines, PHMSA's hazardous liquid pipeline safety regulations for rural gathering lines and low-stress lines, and the overarching risk-based philosophy of the pipeline safety regulations. GPA also noted that a PIR exception would ensure that PHMSA's new regulations for Class 1 gas gathering lines satisfied the cost-benefit provision in the Pipeline Safety Act and were consistent with DOT policies, practices, and procedures and the President's recent Executive Orders on regulatory reform, domestic energy independence, and economic growth.

In late December 2018, PHMSA released a modified proposal for the GPAC's consideration.¹⁶ Acknowledging the comments received in response to the NPRM and API's efforts to develop a revised edition of RP 80, the Agency recommended that the proposed changes to the gas gathering definitions be withdrawn. PHMSA also recommended that the minimum diameter threshold for regulated Class 1 gas gathering lines be increased from 8 inches or greater to greater than 12 inches,¹⁷ and that at least one dwelling be located within the PIR for pipelines at the lowest end of the diameter threshold (greater than 12 inches and less than or equal to 16 inches) to be regulated. As for the other proposals in the NPRM, PHMSA recommended that the requirements for Type B gathering lines and the emergency response plan provisions in 49 C.F.R. § 192.615 apply to regulated Class 1 gas gathering lines, that operators be given two years to achieve compliance with those regulations, and that a "letter of no objection" process be added to allow for the continued use of composite pipe in regulated systems. Lastly, the Agency recommended that operators of regulated Class 1 gas gathering lines comply with the same Part 191 reporting requirements as operators of other regulated gathering lines; but that operators of unregulated Class 1 gas gathering lines only comply with the incident and annual reporting requirements in Part 191, and that the annual reporting form for unregulated Class 1 gas gathering lines be modified to only require certain specific information.

In early June 2019, GPA and API submitted another joint comment letter responding to PHMSA's GPAC proposal.¹⁸ GPA and API expressed strong support for the Agency's recommendation to retain the current gathering definitions. GPA and API also expressed support for increasing the minimum diameter threshold for regulated Class 1 gas gathering lines to greater than 12 inches and adding a PIR exception (although GPA asked PHMSA to remove the 16-inch-diameter limitation and apply the latter provision to pipelines 24 inches or less in diameter).¹⁹ GPA and API expressed general support for applying the requirements for Type B gathering lines and emergency plans to regulated Class 1 gas gathering lines, so long as the Agency took appropriate action to accommodate the use of composite pipe materials and extended the compliance deadlines for certain provisions. Finally, GPA and API expressed general support for extending the federal incident and annual reporting requirement to unregulated Class 1 gas gathering lines.

¹⁶ PHMSA, Safety of Gas Gathering Pipelines, GPAC Meeting at 80 (Jan. 8-9, 2019) (GPAC Presentation), <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/standards-rulemaking/pipeline/70276/gas-gathering-lines-gpac-meeting-jan-8-9-2019-presentation-version-12-21-2019.pdf>.

¹⁷ GPAC Presentation at 93. PHMSA said that the comments received in response to the NPRM indicated that a minimum nominal diameter threshold of greater than 12 inches would be sufficient to capture the larger diameter, higher pressure associated with unconventional shale gas production. *Id.* at 94.

¹⁸ API and GPA, Supplemental Comment Letter PHMSA GPAC Presentation, Docket. No. PHMSA-2011-0023 (Jun. 10, 2019) <https://www.regulations.gov/document?D=PHMSA-2011-0023-0460>. As a result of an unexpected lapse in federal government funding, PHMSA had to postpone the GPAC meeting from early January 2019 until late June 2019.

¹⁹ In support of that position, GPA noted that PHMSA had not provided a sound technical basis for restricting the PIR limitation to pipelines that are 16 inches or less in nominal diameter. GPA also noted that the PIR of a 24-inch pipeline with an MAOP of 1440 psig would not exceed the boundaries of a class location unit (220 yards, or 660 feet), that operators were already collecting information about the presence of dwellings in class location units in conducting class location studies, and that applying the PIR limitation to pipelines up to 24 inches in nominal diameter would not impose any additional costs on operators, making the regulations more efficient and cost effective.

On June 25 and 26, 2019, the GPAC met at the U.S. Department of Transportation's headquarters in Washington, D.C., to consider the Agency's proposed rule for onshore gas gathering lines.²⁰ During that meeting, the GPAC endorsed PHMSA's recommendations to retain the current gathering definitions and limit the federal reporting requirements for unregulated Class 1 gas gathering lines to incident and annual reporting only. However, the GPAC recommended that PHMSA consider establishing a minimum set of safety standards for Class 1 gas gathering lines 8 inches or greater in diameter, and that the Agency use a PIR concept in determining whether additional safety standards should apply to larger diameter gathering lines, *e.g.*, greater than 12 inches in diameter. The GPAC did not consider the PRIA (or any of the evidence in the record disputing the methodology and merits of that assessment) in making either of these recommendations. Nor did the GPAC draft a report discussing the PRIA or the technical feasibility, reasonableness, and practicability of the proposals reflected in its recommendations. The GPAC simply prepared several PowerPoint slides briefly summarizing its recommendations throughout the course of the meeting.

IV. Comments

- a. GPA and API support the consensus recommendation to withdraw the proposed changes to the onshore gas gathering line definitions and collect appropriate data from all gathering line operators through the filing of incident and annual reports.*

GPA and API strongly support the consensus recommendation to retain the current definitions for onshore gas gathering lines in Part 192. The definitions proposed in the NPRM did not comply with the rulemaking requirements in the Pipeline Safety Act and would fundamentally alter the longstanding jurisdictional framework that has applied to the gathering industry. GPA and API are working to develop a new edition of RP 80 and support making appropriate changes to that standard to address the concerns identified in the NPRM. When that effort is complete, API will file a petition for rulemaking asking the Agency to incorporate the new edition of RP 80 by reference. GPA and API hope that PHMSA is able to act expeditiously in reviewing that petition and presenting the matter to the GPAC for future consideration.

GPA and API also support the consensus recommendation to collect appropriate data from all gathering line operators through the filing of incident and annual reports. The language originally proposed in the NPRM would have applied all of the reporting requirements in Part 191 to gathering lines, whether regulated or not, resulting in overwhelming compliance costs for the industry. GPA and API appreciate the clarification that PHMSA issued during the public comment period that the Agency did not intend to extend the safety-related condition and MAOP exceedance reporting requirements to operators of unregulated gathering lines. GPA and API are also pleased that all stakeholders agree that PHMSA can obtain the information necessary to evaluate the safety of unregulated Class 1 gas gathering lines by requiring operators to submit appropriate data in incident and annual reports. GPA and API note that the Agency has committed to making further efforts to reduce the burden that these new reporting requirements may impose on gathering line operators, particularly in the near term, and that the GPAC recommended that PHMSA take appropriate steps to accommodate the possibility of unknown data responses in these reports.

²⁰ GPAC Meeting (June 25-26, 2019), <https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=143>

- b. *GPA and API strongly support PHMSA's recommendation to limit any new federal safety standards to high-stress Class 1 gas gathering lines greater than 12 inches in diameter.*

PHMSA's proposal to the GPAC limited the new federal safety standards to high-stress Class 1 gas gathering lines greater than 12 inches in diameter. The 8-inch-diameter threshold originally proposed in the NPRM would extend PHMSA's jurisdiction to thousands of miles of small diameter, conventional gathering lines that have not historically been subject to federal oversight. There is no data to suggest that these lines present a sufficient risk to public safety to warrant regulation, nor is there any indication that the benefits of applying the proposed safety standards to these lines would justify the costs. To the contrary, the economic analysis submitted by API indicates that the potential costs would far outweigh any potential benefits, particularly for smaller operators. For these reasons, GPA and API strongly support PHMSA's recommendation to the GPAC that any new federal safety standards be limited to high-stress Class 1 gas gathering lines greater than 12 inches in diameter.

- c. *GPA and API strongly support PHMSA's recommendation to add a PIR limitation, but GPA believes that provision should apply to pipelines 24 inches or less in diameter.*

PHMSA proposal to the GPAC included a PIR provision for high-stress, Class 1 gas gathering lines greater than 12 inches and less than or equal to 16 inches in diameter. Under that provision, a pipeline falling within those diameter thresholds would only be regulated if the PIR contains a building intended for human occupancy or another impacted site. As explained in comments submitted prior to the GPAC meeting, GPA and API strongly support using the PIR as an additional factor in determining the regulatory status of Class 1 gas gathering lines. The PIR concept is well-established in the IM regulations, and the Agency uses a similar criterion (proximity to USAs) in applying the regulations in 49 C.F.R. Part 195 to petroleum gathering lines in rural areas. Adding the PIR limitation to the Class 1 gas gathering line regulations allows all interested stakeholders, including operators, PHMSA, and the certified state authorities that primarily regulate gathering lines, to focus their resources on pipelines that present a meaningful risk to public safety.

While API has not reached a consensus position on the issue, GPA does not agree that the PIR provision should be limited to pipelines 16 inches or less in diameter. The sole basis for that limitation, according to statements made by PHMSA staff during the GPAC meeting, was an internal Agency analysis showing an increase in pipeline incident costs above the 16-inch diameter threshold.²¹ PHMSA did not share that internal analysis prior to the GPAC meeting, and there was no discussion of the data or methodology that the Agency used in reaching its conclusions. Nor has PHMSA identified a technical basis for restricting the PIR limitation to pipelines 16 inches or less in nominal diameter, a point that an industry GPAC member specifically made during the debate at the public meeting.²² The PIR uses pipe diameter, gas composition, and operating pressure, along with the presence of buildings intended for human occupancy or other impacted sites, to evaluate potential risk. Imposing an arbitrary pipe diameter limitation undermines the

²¹ Transcript of GPAC Meeting at 41:11-43:8 (June 26, 2018).

²² *Id.* at 45:12-47:16 (comments of Chad Zamarin).

legitimacy and accuracy of that evaluation. As GPA also explained in comments submitted prior to the GPAC meeting, the PIR of a 24-inch pipeline with an MAOP of 1440 psig does not exceed the width of a class location unit (220 yards, or 660 feet),²³ and operators are already collecting information about the presence of dwellings and other impacted sites within that distance in conducting class location studies. Applying the PIR provision to pipelines up to 24 inches in diameter would ensure that populated areas receive an extra level of regulatory scrutiny without imposing any additional costs on operators, making the requirements more efficient and cost effective.

- d. GPA and API support the consensus recommendation to apply the requirements for Type B gathering lines and emergency plans to regulated Class 1 gas gathering lines, subject to a 2-year effective date for determining initial applicability and a 3-year effective date for achieving initial compliance, provided an operator can ask PHMSA to extend these compliance deadlines in a particular case.*

GPA and API support the consensus recommendation to apply the requirements for Type B gathering lines and the emergency response provisions in § 192.615 to regulated Class 1 gas gathering lines. As GPA and API explained in comments submitted prior to the GPAC meeting, gathering line operators are familiar with the Type B regulations, and industry understands the importance of applying emergency response requirements to larger diameter, high-stress pipelines in Class 1 locations.

GPA and API also support the consensus recommendation to adopt a 2-year effective date for determining initial applicability and a 3-year effective date for achieving compliance with the regulations for Class 1 gas gathering lines. Unlike the deadlines originally proposed in the NPRM, the consensus recommendation provides operators with an initial compliance timeframe that is comparable to what PHMSA included in the 2006 final rule for gas gathering lines.

However, GPA and API still believe there will be circumstances where operators may not be able to meet the 2-year or 3-year deadlines. In those situations, PHMSA should allow operators to ask for a longer compliance deadline using the process already provided in 49 C.F.R. § 192.9(e)(2). The Agency should not require operators to use the special permit process to obtain an extension of the initial compliance deadlines in the final rule.

- e. GPA and API strongly support designating regulated Class 1 gas gathering lines as Type C lines.*

GPA and API continue to believe that regulated Class 1 gas gathering lines should be designated as Type C lines. PHMSA's proposal to use the "Type A, Area 2" designation for regulated Class 1 gathering lines is confusing and introduces unnecessary complexity into the Type A and Type B risk framework currently used in Part 192. Using the Type C designation for regulated Class 1 gathering lines is consistent with that framework and provides operators with greater clarity on the applicability of the pipeline safety rules.

²³ 49 C.F.R. § 192.5(a)(1) (2018).

f. PHMSA should reject the GPAC's recommendation to consider establishing regulations for Class 1 gathering lines 12 inches or less in diameter.

GPA and API urge PHMSA to reject the GPAC's recommendation to consider establishing regulations for Class 1 gas gathering lines 12 inches or less in diameter. The record shows that the GPAC did not fulfill its statutory obligations in making that recommendation, and that the legitimacy of the entire rulemaking process would be undermined if the Agency relies on that recommendation to exercise jurisdiction over small diameter gas gathering lines. As GPA, API, and other industry commenters have noted throughout this proceeding, there is currently no credible safety data that supports regulating smaller diameter gas gathering lines in Class 1 locations, and the costs of doing so far outweighs any potential benefits. Therefore, PHMSA should reject the GPAC's recommendation to consider establishing regulations for Class 1 gas gathering lines 12 inches or less in diameter.

By way of background, the GPAC is a federal advisory committee originally established in the Natural Gas Pipeline Safety Act of 1968 (1968 Act),²⁴ primarily for the purpose of evaluating and providing PHMSA with recommendations on proposed changes to the federal gas pipeline safety regulations. The GPAC is comprised of 15 members who are appointed by the Secretary of Transportation for three-year terms.²⁵ To ensure fairness and a balance of interests, the GPAC's membership is equally divided among three groups—there are (1) five industry representatives, (2) five government representatives, and (3) five public representatives.²⁶ The Pipeline Safety Act generally requires GPAC members to “be experienced in the safety regulation of transporting gas and of gas pipeline facilities or technically qualified, by training, experience, or knowledge in at least one field of engineering applicable to transporting gas or operating a gas pipeline facility, to evaluate gas pipeline safety standards or risk management principles.”²⁷ Additional limitations apply to the GPAC members representing each of the three interest groups, including a requirement that at least one industry and one public representative “have education, background, or experience in risk assessment and cost-benefit analysis.”²⁸

Several important statutory obligations apply to the GPAC's evaluation of proposed changes to the gas pipeline safety regulations. Within 90 days of receiving the proposed standard, risk assessment, and any other supporting analysis, the GPAC must prepare and submit a report to PHMSA “on the technical feasibility, reasonableness, cost-effectiveness, and practicability” of the proposed standard and include the Committee's recommendations (Proposed Pipeline Safety Standard Report).²⁹ PHMSA must then publish the Proposed Pipeline Safety Standard Report, “including any recommended actions or minority views.”³⁰ The GPAC's recommendations are not binding on the Agency, but PHMSA must publish the reasons for rejecting any of the GPAC's conclusions in a rulemaking proceeding.³¹ The GPAC must also submit a separate report that specifically addresses the risk assessment, including “an evaluation of the merit of the data and

²⁴ 49 U.S.C. § 60115.

²⁵ *Id.* § 60115(b).

²⁶ *Id.* § 60115(b)(3).

²⁷ *Id.* § 60115(b)(1).

²⁸ *Id.* § 60115(b)(4)(B)-(C).

²⁹ *Id.* § 60115(c)(2).

³⁰ *Id.*

³¹ *Id.*

methods used” and “any recommended options relating to [the] risk assessment information and the associated standard that the committee determines to be appropriate” (Risk Assessment Report).³² PHMSA must provide a written response to the GPAC on all significant Committee comments and recommendations included in the Risk Assessment Report.³³

GPAC never prepared a Proposed Pipeline Safety Standard Report or Risk Assessment Report for the proposed changes to the gas gathering regulations. The Agency’s website identifies three documents as the GPAC’s “reports” for the June 2019 meeting: (1) several PowerPoint slides that the GPAC voted to approve during the meeting; (2) the written transcript for the June 25, 2019 session; and (3) the written transcript for the June 26, 2019 session.³⁴ None of these documents qualify as the reports that the GPAC is required to prepare and submit to PHMSA under the Pipeline Safety Act. The PowerPoint slides, which were prepared with the assistance of PHMSA staff, do nothing more than briefly summarize the language of certain GPAC provisions in the Pipeline Safety Act and provide a bulleted list of recommendations. A quarter century of Agency practice following the passage of the 1968 Act shows that these slides do not in any way resemble the type of substantive report that Congress or PHMSA’s predecessors had in mind.³⁵ Nor do the transcripts from the GPAC meeting serve as a substitute for the Proposed Pipeline Safety Standard Report or Risk Assessment Report. The Agency’s obligation to prepare a “record” of each GPAC meeting is separate and distinct from the GPAC’s obligation to prepare the two “reports” required under the Pipeline Safety Act.³⁶

³² *Id.* § 60102(b)(4)(B). The risk assessment is a document that describes “the reasonably identifiable or estimated [costs and] benefits expected to result from implementation or compliance with the standard.” *Id.* § 60102 (b)(3).

³³ *Id.* § 60102(b)(4)(C).

³⁴ GPAC Meeting (June 25-26, 2019), <https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=143>.

³⁵ A review of the historical rulemaking proceedings confirms that the GPAC prepared standalone written reports on proposed changes to the gas pipeline safety regulations for decades. Describing the GPAC’s statutory obligations in 1969, the Director of the Office of Pipeline Safety stated that “reports ... simply [are] not the type of function which can be reported verbatim,” and that the Primary Report “is an altogether different thing than the reporter’s transcript of a meeting...” Transcript of Technical Pipeline Safety Standards Committee Meeting at 23:8-9, 25:7-8 (Jan. 30, 1969), <https://www.regulations.gov/document?D=PHMSA-2014-0095-0003>. A decade later, in 1977, the Acting Director of the Office of Pipeline Safety expressed concern that GPAC was not producing a robust report. Referencing the statute and noting that it was the intent of Congress that the GPAC indicate if a proposed rule was practical or feasible, the Acting Director expressed concern that a Committee’s report that was limited to revisions to the proposed rule text was tantamount to a redrafted rule. The Director stated that “it makes [the agency’s] job very difficult . . . [if] we have to go through about 300 pages of transcript trying to figure out the reason.” Transcript of Technical Pipeline Safety Standards Committee Meeting at 196:21 – 200:9, 197:9-12 (June 8, 1977), <https://www.regulations.gov/document?D=PHMSA-2014-0095-0041>. The GPAC did not depart from the historical practice of preparing a written report separate from the meeting transcript until the 1990s. GPA and API note that PHMSA has encouraged that practice in recent years, erroneously advising the GPAC that the meeting transcript can serve as the “reports” required under the Pipeline Safety Act. Transcript of GPAC Meeting at 36:15 – 37:6 (Mar. 23, 2011), <https://www.regulations.gov/document?D=PHMSA-2009-0203-0080> (“Since we haven’t really had a lot of written reports with the committees over the last few years, we did want to clarify that once members consider each proposed rule in the draft regulatory evaluation, you know, determine that regulatory language, the technical feasibility and responsiveness, cost effectiveness, and practicability of the proposal, the verbatim transcript serves as our committee report unless another document is provided for the membership. So I just wanted to clarify that the transcript is our reporting out.”).

³⁶ Compare 49 U.S.C. § 60115(e) (stating that “[e]ach [GPAC] proceeding shall be recorded” and that “[t]he record of the proceeding shall be available to the public”) with 49 U.S.C. § 60115(c)(2) (requiring the GPAC to submit reports on proposed standards). GPA and API also note that the GPAC’s charter treats the committee’s reports as separate and distinct from the other documents generated during the advisory process.

Even if the Agency's position is correct and the PowerPoint slides and written transcript could satisfy the GPAC's mandate to prepare the Proposed Pipeline Safety Standard and Risk Assessment Reports, those documents should be given no weight in deciding whether to regulate Class 1 gas gathering lines 12 inches or less in diameter. The Pipeline Safety Act requires the GPAC to consider the "cost-effectiveness" of a proposed standard and to provide "an evaluation of the merit of the data and methods used" in the risk assessment.³⁷ There is no indication that the GPAC ever conducted a meaningful review of PRIA or considered the various public comments that directly challenged the methodology and assumptions used in preparing that analysis. To the contrary, the GPAC was nearly silent on the cost-effectiveness of the proposed rule during the public meeting, particularly with respect to the impact of extending PHMSA's regulations to smaller-diameter Class 1 gas gathering lines.³⁸

The GPAC's failure to consider the cost-effectiveness severely prejudices the regulated community, particularly given the obvious flaws in the PRIA. Commenters raised a number of serious concerns with PHMSA's cost-benefit analysis and noted that PRIA significantly underestimated the costs and overstated the benefits of the NPRM's gas gathering provisions. API and its contractor, ICF International, identified numerous costs that PHMSA either did not account for or incorrectly estimated in the PRIA. ICF also concluded that the benefits resulting from the standards were overstated.³⁹ Examples of missing costs that ICF found included those associated with verifying MAOP, and additional costs for meeting certain structural design and material requirements.⁴⁰ If these costs and benefits were properly accounted for, API determined that the total cost of the standards was \$33.4 billion, a dramatic increase from PHMSA's cost-benefit analysis estimate.⁴¹

Federal courts have held in analogous cases that the failure of an advisory committee or an agency itself to undertake statutorily required procedures is grounds for invalidating the rulemaking arising from it.⁴² The few cases that upheld agency rulemaking in the face of procedural deficiencies did so only where it was found that the deficiency was so minor that the deviation did not deprive the agency or public of the committee's conclusions on all of the issues it was to consider and provide on input on (*e.g.*, abridged meeting minutes which omitted ministerial or administrative topics but which detailed all substantive conclusions).⁴³ The GPAC's errors in reviewing PHMSA's proposed rule for gas gathering lines are hardly ministerial in nature. The obligation to prepare and submit the Proposed Pipeline Safety Standard and Risk Assessment Reports and consider cost-effectiveness are a core part of the GPAC's advisory function. The GPAC must honor those obligations to serve any useful role in the rulemaking process.

³⁷ 49 U.S.C § 60115(c)(2); *Id.* § 60102(b)(4)(B).

³⁸ Transcript of GPAC Meeting at 102:3-16, 266:18- 267:13, 286:8-12 (June 25, 2019) (references to cost benefit).

³⁹ API Comments.

⁴⁰ ICF International, "Cost and Benefit Impact Analysis of the PHMSA Natural Gas Gathering and Transmission Safety Regulation Proposal," Docket No. PHMSA-2011-0023-0381 (July 1, 2016) (attached to API Comments).

⁴¹ API Comments at 2.

⁴² *See, e.g., Mickelsen Farms, LLC v. Animal & Plant Health Insp. Servs.*, No. 15-cv-00143, 2018 WL 1413183 (D. Idaho Mar. 20, 2018) (finding that an advisory committee's deficiencies under the Federal Advisory Committee Act outweighed disruptions to the rulemaking process because the deficiencies affected the "public's important interest in participating in the process of developing the rules.").

⁴³ *See, e.g., Nehmer v. U.S. Veterans Admin.*, 712 F.Supp. 1404, 1422-23 (N.D. Cal. 1989).

Congress included the requirement to submit the Proposed Pipeline Safety Standard Report in the 1968 Act and the rulemaking history shows that the GPAC prepared and submitted actual written reports, including minority views, in the years that followed. Congress added the requirement to consider cost-effectiveness in promulgating new regulations several decades later as part of the Accountable Pipeline Safety and Partnership Act of 1996.⁴⁴ The fundamental purpose of the provision was to “ensure that most safety and environmental risks [to pipeline safety] are addressed with the most cost-effective solutions,” and to “identify the most rational, cost-effective alternatives, if any, to a given proposed safety requirement.”⁴⁵ To achieve that objective, Congress added requirements for peer review of proposed standards by the GPAC “to bring more rationality to federal pipeline safety standard setting and broaden participation by requiring [Office of Pipeline Safety] to consider more carefully comments received from these bodies.”⁴⁶ GPAC’s failure to provide the statutorily required input on cost-effectiveness is contrary to the plain language of the Pipeline Safety Act and undermines Congress’ intent to improve pipeline safety through consultation specifically on the issue of cost-effectiveness.

For these reasons, PHMSA should reject the GPAC’s recommendation to consider establishing regulations for Class 1 gas gathering lines 12 inches or less in diameter. The GPAC failed to comply with its statutory obligations in making that recommendation, and the record does not otherwise support extending PHMSA’s jurisdiction to these small diameter lines. Accordingly, GPA and API urge the Agency to disregard the GPAC’s recommendation in developing the final rule.

- g. GPA and API are willing to support other initiatives that enhance PHMSA’s efforts to establish reasonable, risk-based safety standards for gas gathering lines.*

GPA and API are willing to support other initiatives that enhance PHMSA’s efforts to establish reasonable, risk-based safety standards for gas gathering lines. As noted in comments submitted prior to the GPAC meeting, GPA and API are working to develop a revised edition of RP 80 and a new recommended practice with comprehensive safety standards for large diameter Class 1 gas gathering lines. Federal law requires PHMSA to consider these industry standards in developing gas pipeline safety regulations, and GPA and API hopes that these recommended practices will provide the Agency with an appropriate framework for regulating gas gathering lines.

GPA and API also support establishing a Subcommittee of the GPAC to consider whether PHMSA needs to establish additional safety standards for gas gathering lines. The GPAC’s charter acknowledges that the Secretary of Transportation can create subcommittees for the purpose of making findings or preparing reports for the full committee. A Gas Gathering Subcommittee would be particularly appropriate given the GPAC’s failure to prepare the Proposed Pipeline Safety Standard and Risk Assessment Reports in this proceeding.

⁴⁴ Pub. L. No. 104-304, 110 Stat. 3793 (1996)

⁴⁵ S. Rept. 104-334, at 2, 3 (1996),

⁴⁶ *Id.* at 3-4.

Finally, GPA and API are open to discussing other voluntary initiatives that would improve gas pipeline safety as well. Such initiatives would include providing PHMSA with additional safety data about the gas gathering lines operated by GPA and API member companies and making commitments to begin early implementation of the Agency's proposed requirements for high-stress Class 1 gas gathering lines greater than 12 inches in diameter.

V. Conclusion

GPA and API share PHMSA's commitment to pipeline safety and appreciate the opportunity to submit these supplemental comments responding to the GPAC's recommendations for onshore gas gathering lines. Please feel free to contact us directly if you have any additional questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Matthew Hite". The signature is fluid and cursive, with the first name "Matthew" being larger and more prominent than the last name "Hite".

Matthew Hite
Vice President of Government Affairs
GPA Midstream Association

A handwritten signature in blue ink that reads "David Murk". The signature is stylized and cursive, with a large, looping initial "D" and a trailing flourish.

David Murk
Pipeline Manager, Midstream
American Petroleum Institute
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