



**Via email to: [Safety@rrc.texas.gov](mailto:Safety@rrc.texas.gov)**

August 12, 2019

The Railroad Commission of Texas  
Oversight and Safety Division  
Pipeline Safety Department  
1701 N. Congress  
Austin, Texas 78701

**Re: Comments on Informal Draft Amendments to the Pipeline Safety Regulations  
for Rural Gathering Lines**

**I. Introduction**

On July 26, 2019, the Railroad Commission of Texas (Commission) released informal draft amendments to the pipeline safety regulations in 16 Tex. Admin. Code §§ 8.1 - 8.315 (2019).<sup>1</sup> In the informal draft amendments, the Commission proposed to establish a set of general safety standards for Class 1 gas gathering lines and certain hazardous liquid and carbon dioxide gathering lines in rural areas. The Commission also proposed to establish additional safety standards for certain larger diameter, high-stress gas gathering lines in Class 1 locations, to extend the incident and accident reporting requirements to all gathering lines, and to adopt requirements for conducting investigations and implementing corrective actions for gathering lines.

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<sup>1</sup> On July 1, 2019, the Commission released an initial version of the informal draft amendments. On July 24, 2019, the Commission held a public meeting in Austin, Texas, to discuss those proposals. After considering the comments received at that public meeting, the Commission released an updated version of the informal draft amendments on July 26, 2019. The comments provided in this letter only address the proposals contained in the latest version of the informal draft amendments.

GPA Midstream Association (GPA Midstream)<sup>2</sup> and the American Petroleum Institute (API)<sup>3</sup> do not support the Commission’s informal draft amendments to the safety standards for rural gathering lines. The proposed regulations are not consistent with the applicable requirements in the Texas Natural Resources Code and Texas Utilities Code and conflict with the Pipeline and Hazardous Materials Safety Administration’s (PHMSA) effort to establish new federal safety standards and reporting requirements for gathering lines. The Commission has not offered any data or information to support the informal draft amendments and only afforded several weeks to provide comments on a proposal that would increase the amount of regulated gathering line mileage in Texas nearly thirty-fold.

Given the large number of pipeline operators that could be impacted, the significant nature of the proposed revisions, and the crucial resources that would need to be diverted to achieve compliance, GPA Midstream and API are urging the Commission not to pursue the informal draft amendments at this time. Instead, the Commission should focus on acquiring additional safety data for rural gathering lines and allow PHMSA to finish the federal rulemaking process. Once PHMSA’s new regulations are in place, the Commission can incorporate those regulations by reference and make an informed decision as to whether any other risk-based safety standards for gathering lines are necessary. That course of action meets the Commission’s obligations to protect public safety and is consistent with the requirements in federal and state law.

## **II. Background**

PHMSA administers a national pipeline safety program pursuant to the authority provided in the Pipeline Safety Act.<sup>4</sup> PHMSA’s primary obligation is to prescribe and enforce minimum federal safety standards for gas and hazardous liquid pipeline facilities and persons engaged in the transportation of gas and hazardous liquids. PHMSA’s pipeline safety standards are codified at 49 C.F.R. Parts 190 to 199. PHMSA is responsible for ensuring that operators of regulated interstate pipeline facilities comply with these requirements.

PHMSA also oversees a federal certification and grant program that allows state authorities to regulate the safety of intrastate gas and hazardous liquid pipeline facilities.<sup>5</sup> To participate in

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<sup>2</sup> GPA Midstream is composed of nearly 80 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. Additional information about GPA Midstream is available at <https://gpaglobal.org/>.

<sup>3</sup> 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.

<sup>4</sup> 49 U.S.C. §§ 60101-60503 (2017).

<sup>5</sup> See *Olympic Pipeline Co. v. City of Seattle*, 437 F.3d 872, 879 (9th Cir. 2006) (discussing state authority to regulate intrastate pipelines under the federal pipeline safety laws).

that program, a state authority must submit an annual certification to PHMSA, agree to adopt the minimum federal safety standards, and meet other program requirements.<sup>6</sup> A certified state authority can apply additional or more stringent safety standards to intrastate pipeline facilities, so long as the state standards are compatible with the minimum federal requirements.<sup>7</sup>

The Commission has a certification to regulate intrastate gas and hazardous liquid pipeline facilities in Texas. The Commission's pipeline safety standards incorporate PHMSA's Part 191, 192, 195, and 199 regulations by reference, effective as of October 30, 2017.<sup>8</sup> The Commission also applies certain additional or more stringent state safety standards to intrastate gas and hazardous liquid pipeline facilities.<sup>9</sup>

#### **a. Safety Standards for Gathering Lines**

The Commission enforces PHMSA's Part 192 regulations for onshore gas gathering lines.<sup>10</sup> Part 192 requires operators to use the definition in American Petroleum Institute (API) Recommended Practice 80, Guidelines for the Definition of Onshore Gas Gathering Lines (1st ed., April 2000) to determine if a pipeline is an "onshore gathering line," subject to certain additional regulatory limitations.<sup>11</sup> The Commission imposes a further limitation by regulation and treats all production lines in Texas as gas gathering lines beginning at the first point of measurement.<sup>12</sup>

If a pipeline meets the definition of an onshore gas gathering line, Part 192 requires operators to determine if the line is regulated.<sup>13</sup> Part 192 currently applies to two categories of gas gathering lines: (1) Type A gathering lines, which are higher stress pipelines that pass through Class 2 locations, Class 3 locations, and Class 4 locations,<sup>14</sup> and (2) Type B gathering lines, which are lower stress pipelines that pass through those same locations.<sup>15</sup> Different risk-based safety standards apply to Type A and Type B gathering lines.<sup>16</sup> Part 192 does not currently apply to gas

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<sup>6</sup> 49 U.S.C. § 60105.

<sup>7</sup> *Id.* § 60104(c). A state authority can also enter into a separate agreement with PHMSA to participate in the oversight of interstate pipeline facilities, primarily by performing inspections of intrastate or interstate pipeline facilities for compliance with the federal safety standards. *Id.* § 60106(b).

<sup>8</sup> 16 Tex. Admin. Code § 8.1(b)(1)-(3) (2018).

<sup>9</sup> *See id.* §§ 8.201-8.315.

<sup>10</sup> TRRC's rules define the endpoint of production operations and beginning of gas gathering operations as the first point of measurement. 16 Tex. Admin. Code § 8.1(a)(1)(B); *see also id.* § 8.5(28) (defining transportation of gas to begin at the first point of measurement for safety purposes). PHMSA's regulations do not impose that limitation and allow onshore production operations to extend to points further downstream. *See* 49 C.F.R. § 192.8(a)(1) (2018) (directing operators to follow the provisions in API Recommended Practice 80, "Guidelines for the Definition of Onshore Gas Gathering Lines," 1st edition, April 2000, in determining the extent of onshore production operations, subject to a limitation for certain dual-use equipment, such as separators or dehydrators). *Id.* §§ 192.8 to 192.9 (2018).

<sup>11</sup> 49 C.F.R. § 192.8(a).

<sup>12</sup> 16 Tex. Admin. Code § 8.1(a)(1)(B); *see also id.* § 8.5(28) (defining transportation of gas to begin at the first point of measurement for safety purposes).

<sup>13</sup> 49 C.F.R. § 192.8(b).

<sup>14</sup> *Id.* § 192.8(b) (table).

<sup>15</sup> *Id.*

<sup>16</sup> *Compare id.* § 192.9(c) with *Id.* § 192.9(d).

gathering lines in Class 1 locations, although PHMSA has initiated a rulemaking proceeding to establish new safety standards and reporting requirements for these pipelines.<sup>17</sup>

The Commission also enforces PHMSA's Part 195 regulations for gathering lines.<sup>18</sup> Part 195 defines a gathering line as a pipeline "219.1 mm (8 5/8 in) or less nominal outside diameter that transports petroleum from a production facility."<sup>19</sup> Part 195 applies to all gathering lines in non-rural areas,<sup>20</sup> but only applies to gathering lines in rural areas that meet certain criteria.<sup>21</sup> As with regulated gas gathering lines, Part 195 requires operators of regulated rural petroleum gathering lines to comply with a series of risk-based safety standards.<sup>22</sup>

## **b. H.B. 2982**

In 2013, the Texas Legislature enacted a law, H.B. 2982, that gave the Commission additional authority to regulate the safety of rural gathering lines.<sup>23</sup> Prior to the enactment of H.B. 2982, the Commission's jurisdiction to regulate the safety of intrastate hazardous liquid and carbon dioxide pipelines under the Natural Resources Code did not extend to "gathering lines in rural locations."<sup>24</sup> H.B. 2982 repealed that prohibition and authorized the Commission to establish safety standards for "intrastate transportation of hazardous liquids and carbon dioxide by gathering pipelines in rural locations," effective as of September 1, 2015.<sup>25</sup> However, H.B. 2982 makes clear that such safety standards must be "based only on the risks . . . to public safety" or "necessary . . . to maintain the maximum degree of federal delegation permissible" under the Pipeline Safety Act.<sup>26</sup>

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<sup>17</sup> See Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. 20,722 (Apr. 8, 2016).

<sup>18</sup> 16 Tex. Admin. Code §§ 8.1(a)(1)(C), (b)(2).

<sup>19</sup> 49 C.F.R. § 195.2. Petroleum is further defined as "crude oil, condensate, natural gasoline, natural gas liquids, and liquefied petroleum gas." *Id.*

<sup>20</sup> *Id.* § 195.1(a)(4)(i).

<sup>21</sup> *Id.* § 195.1(b)(4). Part 195 only applies to rural gathering lines that meet PHMSA's definition of a "regulated rural gathering line." *Id.* § 195.11. A "regulated rural gathering line" must have all of the following characteristics: (1) be located onshore in a rural area; (2) have a nominal diameter between 6 5/8 and 8 5/8 inches; (3) be located in or within .25 mile of an "unusually sensitive area"; and (4) have a maximum operating pressure that produces a hoop stress that is greater than 20 percent of SMYS. *Id.* § 195.11(a).

<sup>22</sup> 49 C.F.R. § 195.11.

<sup>23</sup> H.B. 2982, §§ 3, 4, 83rd Leg. (Tex. 2013); S.B. 901, § 11, 83rd Leg. (Tex. 2013).

<sup>24</sup> Tex. Natural Resources Code Ann. §§ 117.001(3), 117.011(a), 117.012(b) (2019).

<sup>25</sup> H.B. 2982, § 2.

<sup>26</sup> *Id.* The Legislature added the exclusion for rural gathering lines in the 1983 law, H.B. 1345, 68th Leg. (Tex. 1983), that authorized the Commission to regulate the safety of intrastate hazardous liquid pipeline facilities pursuant to the Hazardous Liquid Pipeline Safety Act of 1979 (HLPESA), Title II of Pub. L. No. 96-129, § 202(3), 93 Stat. 1003, 1003 (1979). Modeled on the Natural Gas Pipeline Safety Act of 1969, Pub. L. No. 90-481, 82 Stat. 720, the HLPESA was the federal law that provided the U.S. Department of Transportation with the authority to prescribe and enforce federal safety standards for hazardous liquid pipeline facilities and persons engaged in the transportation of hazardous liquids. The HLPESA defined the transportation of hazardous liquid to exclude gathering lines in rural locations, and the Texas Legislature added the same exclusion in the 1983 law that authorized the Commission to participate in the hazardous liquid pipeline safety program. Although H.B. 2982 added provisions authorizing the Commission to regulate hazardous liquid and carbon dioxide lines in rural areas, the text of the original exclusion is still codified in the definition of "transportation of hazardous liquids or carbon dioxide" in § 117.001(3) of the Natural Resources Code.

H.B. 2982 also amended the Commission’s jurisdiction to regulate the safety of rural gas gathering lines under the Utilities Code.<sup>27</sup> Prior to the enactment of H.B. 2982, the Utilities Code only authorized the Commission to establish safety standards for the “transportation of gas” and “gas pipeline facilities” as defined in the Pipeline Safety Act, neither of which includes rural gas gathering lines in sparsely populated, Class 1 locations.<sup>28</sup> H.B. 2982 authorized the Commission to “establish safety standards and practices for gathering facilities and transportation activities in Class 1 locations,” effective as of September 1, 2015, so long as those safety standards are “based only on the risks . . . to the public safety” or are “necessary . . . to maintain the maximum degree of federal delegation permissible” from PHMSA under the Pipeline Safety Act.<sup>29</sup>

### **c. Informal Draft Amendments**

On July 26, 2019, the Commission released informal draft amendments to its pipeline safety regulations for rural gathering lines. Relying on the authority provided in H.B. 2982, the proposed amendments would establish a set of general requirements for all gathering lines that are not currently regulated by PHMSA, *i.e.*, gas gathering lines in Class 1 locations and certain hazardous liquid gathering lines in rural locations.<sup>30</sup> The proposed amendments would also establish a set of additional requirements for high-stress Class 1 gas gathering lines greater than 12.75 inches in diameter.<sup>31</sup> Finally, the proposed amendments would extend the Commission’s incident and accident reporting requirements to all newly-regulated gas and hazardous liquid rural gathering lines,<sup>32</sup> as well as the reporting requirements for the commencement of certain construction activities.<sup>33</sup>

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GPA Midstream and API are not offering any comments on whether and to what extent the exclusion prohibits the Commission from exercising jurisdiction over rural gathering lines.

<sup>27</sup> H.B. 2982, § 4.

<sup>28</sup> Tex. Utils. Code Ann. §§ 121.201(a)(1), (b)(1), (c) (2019). For purposes of the definitions in the Pipeline Safety Act, production pipelines are not gas pipeline facilities or used for the transportation of gas. *See* 49 U.S.C. § 60101(21)(A); 49 C.F.R. §§ 192.8 and 192.9; PHMSA Letter of Interpretation to Mr. Edward M. Steele, Supervisor, Gas Pipeline Safety Section, The Public Utilities Comm’n of Ohio, PHMSA PI-92-010 (Mar. 12, 1992) (“Part 192 does not apply to production facilities”); PHMSA Letter of Interpretation to Mr. Lance Fellhoalter, OXY USA, Inc., PHMSA PI-93-060 (Oct. 8, 1993) (“The regulations in Parts 40, 191, 192, and 199 apply to pipeline facilities used in the transportation of gas beginning at the end of the production process.”). The Commission has asserted that certain provisions in the Natural Resources Code allow the pipeline safety rules in Chapter 8 to be applied to production lines that are not jurisdictional under the Utilities Code or Pipeline Safety Act. 16 Tex. Admin. Code § 8.1(a)(1)(B); 34 Tex. Reg. 1414, 1417 (Feb. 27, 2009) (“The Commission confirms its intent to include in its safety requirements those gathering and production lines beyond the first point of measurement. The Commission intends that its safety regulation be more conservative than the standard imposed under the federal rules.”). GPA Midstream and API are not offering any comments on whether the Commission’s interpretation of its authority to regulate production pipelines under the Natural Resources Code and Utilities Code is appropriate.

<sup>29</sup> H.B. 2982, § 4.

<sup>30</sup> 16 Tex. Admin. Code § 8.110(a)-(b) (proposed).

<sup>31</sup> 16 Tex. Admin. Code § 8.110(c) (proposed).

<sup>32</sup> 16 Tex. Admin. Code § 8.110(d) (proposed).

<sup>33</sup> 16 Tex. Admin. Code § 8.115 (proposed).

Although the Commission did not provide any data to support the informal draft amendments, the information on its website indicates that there are approximately 228,478 miles of regulated gas and hazardous liquid pipelines in Texas, including 6,380 miles of regulated gathering lines.<sup>34</sup> It further indicates that there are approximately 177,706 miles of currently-unregulated production and gathering lines that leave boundaries of a lease.<sup>35</sup> Because the Commission's rules treat production lines as onshore gas gathering starting at the point of measurement, the informal draft amendments would presumably apply to all of the pipeline mileage that is currently unregulated. In other words, the amount of regulated gathering line mileage in Texas would increase nearly thirty-fold and constitute approximately 45 percent of the total jurisdictional mileage in the state.

### **III. Comments**

GPA Midstream and API do not support the Commission's informal draft amendments to the safety standards for rural gathering lines. The proposed rules do not satisfy the requirements in H.B. 2982 and go well beyond any changes that PHMSA is considering at the federal level.<sup>36</sup> Rather than considering the actual risk associated with these pipelines, the proposed rules appear to be based on the assumption that the Commission must regulate all gathering lines, and that certain gas gathering lines in sparsely populated, Class 1 locations should be treated the same as gas gathering lines in more populated, Class 2, Class 3, and Class 4 locations. The Commission's proposal to regulate all gathering lines is not reasonable and will require operators to divert critical resources to low-risk pipelines.

As indicated in comments recently submitted to PHMSA, GPA Midstream and API support establishing reasonable, risk-based federal safety standards for gas gathering lines in Class 1 locations. Such safety standards should only apply to high-stress pipelines greater than 12.75 inches in diameter, particularly segments that contain buildings intended for human occupancy or other public sites within the potential impact radius (PIR). Pipelines with these characteristics create enough risk to public safety to warrant regulation. GPA Midstream and API also support extending appropriate reporting requirements to all gathering lines, whether regulated or not. The information provided in these reports will show that gathering lines are operated safely and allow PHMSA and the Commission to make informed decisions about the need to establish additional, risk-based regulations.

PHMSA is in the process of modifying the federal safety standards and reporting requirements for gathering lines. Once that process is complete, the Commission can incorporate PHMSA's new regulations and make an informed judgment as to whether additional or more stringent state requirements are necessary. In the meantime, the Commission can review the information that operators provide in incident and accident reports, conduct investigations, and

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<sup>34</sup> Texas Pipeline System Mileage, <https://www.rrc.texas.gov/pipeline-safety/reports/texas-pipeline-system-mileage/> (last updated Oct. 8, 2018).

<sup>35</sup> *Id.*

<sup>36</sup> See Pipeline Safety: Safety of Hazardous Liquid Pipelines, 80 Fed. Reg. 61,610, 61,611-612 (Oct. 13, 2015); Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. 20,722 (Apr. 8, 2016).

require rural gathering line operators to implement corrective action as appropriate. That course of action is consistent with the requirements in H.B. 2982, avoids establishing state regulations that could be preempted under the Pipeline Safety Act,<sup>37</sup> and meets the Commission's responsibilities to protect public safety.

GPA Midstream and API are providing more detailed comments on the Commission's proposals below.

**a. GPA Midstream and API Do Not Support the Proposed General Requirements for Rural Gathering Lines**

In the informal draft amendments, the Commission proposes to establish a set of general safety standards for all rural gathering lines. Specifically, proposed § 8.110(b)(1) would require all Class 1 gas gathering line operators to comply with the corrosion control requirements in subpart I of 49 C.F.R. Part 192 for metallic lines; the damage prevention and public awareness program requirements in 49 C.F.R. §§ 192.614 and 192.616, respectively; the line marker requirements in 49 C.F.R. § 192.707; and the leak survey and repair requirements in 49 C.F.R. §§ 192.706 and 192.703(c), respectively. Similarly, proposed § 8.110(b)(2) would require operators of hazardous liquid and carbon dioxide gathering lines in rural areas<sup>38</sup> that are not regulated by PHMSA to comply with the corrosion control requirements in subpart H of 49 C.F.R. Part 195 for metallic lines; the damage prevention and public awareness program requirements in 49 C.F.R. §§ 195.442 and 195.440, respectively; the line marker requirements in 49 C.F.R. § 195.410; and the right-of-way (ROW) inspection and repair requirements in 49 C.F.R. §§ 195.412 and 195.401(b)(1), respectively.

The Commission has not provided any information indicating that the proposed requirements in § 8.110(b) are necessary to address legitimate risks to public safety, particularly for small diameter, lower stress gathering lines in unpopulated areas. Rural gathering lines have an excellent safety record and have historically not been subject to the Part 192 or Part 195 regulations.<sup>39</sup> While the risk profile of certain gathering lines has changed in recent years due to

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<sup>37</sup> As discussed in Section II of these comments, the preemption provision in the Pipeline Safety Act requires any additional or more stringent regulations established by the Commission to be consistent with PHMSA's federal requirements, 49 U.S.C. § 60104(c).

<sup>38</sup> The Commission's proposal uses the term "rural location" as defined in 49 C.F.R. § 195.2. GPA Midstream and API assume that this was a drafting error and that the Commission intends to apply the proposed regulations to gathering lines in "rural areas" as defined in 49 C.F.R. § 195.2. There is no definition of "rural location" in Part 195.

<sup>39</sup> The legislative history indicates that the U.S. Congress originally excluded rural gas gathering lines from PHMSA's jurisdiction in the Natural Gas Pipeline Safety Act of 1968 because the "impressive" safety record of these lines did not support the need for federal regulation. H.R. Rep. No. 90-1390 (1968), *reprinted in* 1968 U.S.C.C.A.N. 3223, 3234-35. Congress excluded rural hazardous liquid gathering lines from PHMSA's jurisdiction in the Hazardous Liquid Pipeline Safety Act of 1979 for the same reason, *i.e.*, because the lines "present[ed] insufficient risk to life and property to require regulation." S. Rep. No. 96-182 (1979), *reprinted in* 1979 U.S.C.C.A.N. 1971, 1988. Although Congress relaxed these exclusions in the Pipeline Safety Act of 1992, Pub. L. No. 102-508, § 109, 106 Stat. 3289, 3294-95, PHMSA must still consider certain risk-based factors in determining whether to regulate rural gathering lines. 49 U.S.C. § 60101(b). PHMSA is also still prohibited from regulating "a crude oil gathering line that has a

technological advances in the oil and gas industry, the overwhelming majority of gathering lines still present little or no risk to public safety. Most gathering lines operate at low stress levels and are located in remote, unpopulated areas.<sup>40</sup> Accordingly, GPA Midstream and API do not believe that the sweeping assertion of regulatory authority contemplated by the Commission is consistent with the risk-based rulemaking requirement in H.B. 2982.<sup>41</sup>

For example, the proposed regulation would require the operator of a 2-inch, low pressure gas gathering line in a remote and completely unpopulated area to comply with the public awareness program requirements in 49 C.F.R. § 192.616. The likelihood that the public would ever be impacted by the operation of such a pipeline is extremely low, and there is no indication that requiring the operator to develop and implement a comprehensive public education program will lead to a meaningful reduction in risk. The proposed regulation would also require the same pipeline operator to conduct annual leak surveys using leak detection equipment in accordance with 49 C.F.R. § 192.706. As with the public awareness program requirement, there is no indication that requiring annual leak surveys of a low pressure, 2-inch gas gathering line in a remote and unpopulated area will provide any legitimate benefit to public safety, nor is the technology currently available to make performing these surveys feasible, practicable, or cost effective. The Commission's proposals to extend the public education and ROW inspection requirements in 49 C.F.R. §§ 195.440 and 195.412 to hazardous liquid and carbon dioxide gathering lines in rural areas raise the same concerns.<sup>42</sup>

The compliance deadlines provided in the proposed regulation are not reasonable. As discussed in Section II of this letter, the proposed requirements in § 8.110(b) would presumably apply to the more than 177,000 miles of currently-unregulated production and gathering lines that

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nominal diameter of not more than 6 inches, is operated at low pressure, and is located in a rural area that is not unusually sensitive to environmental damage.” *Id.* § 60101(b)(2)(B)(ii).

<sup>40</sup> According to a September 2015 presentation from Kari French, the Commission's Director of the Oversight and Safety Division, which summarized the results of the 600 responses to a survey of rural gathering line operators, approximately 57% of these lines operate at a stress level that is less than 30% of specified minimum yield strength. Oversight and Safety HB 2982 Workshop (Sept. 15-17, 2015) [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=9&ved=2ahUKEwj0t\\_POgtjjAhUGhOAKHeAUADoQFjAiegQIBxAC&url=http%3A%2F%2Fwww.texasgas.com%2Fwp-content%2Fuploads%2F2015%2F09%2FFFinal-HB-2982-Presentation-Kari-French.pptx&usg=AOvVaw0SqM2jce3eIMPxnxYn6rET](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=9&ved=2ahUKEwj0t_POgtjjAhUGhOAKHeAUADoQFjAiegQIBxAC&url=http%3A%2F%2Fwww.texasgas.com%2Fwp-content%2Fuploads%2F2015%2F09%2FFFinal-HB-2982-Presentation-Kari-French.pptx&usg=AOvVaw0SqM2jce3eIMPxnxYn6rET).

<sup>41</sup> As previously discussed, any safety standard for unregulated rural gathering lines must be “based only on the risks . . . to public safety” or be “necessary . . . to maintain the maximum degree of federal delegation permissible” from PHMSA under the Pipeline Safety Act. H.B. 2982, §§ 2, 4. The proposed general requirements in § 8.110(b) only implicate the first criterion. The proposed requirements would only apply to gathering lines that are not regulated by PHMSA or jurisdictional under the Pipeline Safety Act. The regulatory status of non-jurisdictional pipelines has no bearing on the Commission's annual certification or the amount of federal grant funding that the Commission receives from PHMSA.

<sup>42</sup> GPA Midstream and API note that the definition of gathering line in Part 195 is limited to pipelines that transport petroleum from a production facility, and that the definition of petroleum is limited to “crude oil, condensate, natural gasoline, natural gas liquids, and liquefied petroleum gas.” 49 C.F.R. § 195.2. Pipelines that transport hazardous liquids other than petroleum, including carbon dioxide, petroleum products, and anhydrous ammonia, do not qualify as gathering lines under Part 195.



leave boundaries of a lease in Texas.<sup>43</sup> Despite that fact, the Commission is only providing operators with two years to comply with the corrosion control requirements and one year to comply with the other provisions. These timeframes are simply not practicable and could result in additional flaring or significant reductions in gas production as gathering line operators abandon systems that cannot be brought into compliance. By way of comparison, PHMSA recently proposed to give operators of larger diameter, high stress gathering lines in Class 1 locations three years to achieve compliance with a similar set of regulations.<sup>44</sup> Because the Commission's proposal would impact far more pipeline mileage, operators would need at least five years to comply with the corrosion control requirements and two years to comply with the other provisions.

At a more fundamental level, the informal draft amendments appear to disregard a years-long effort by PHMSA and other stakeholder groups to develop reasonable, risk-based regulations for rural gathering lines. PHMSA is close to issuing a final rule that would require operators to comply with certain federal reporting requirements to determine if additional regulations are necessary for hazardous liquid gathering lines in rural areas.<sup>45</sup> PHMSA also recently presented a separate rulemaking proposal for onshore gas gathering lines to the Gas Pipeline Advisory Committee (GPAC).<sup>46</sup> While a final rule is not expected until next year, PHMSA's recommendation to the GPAC was that operators of certain larger-diameter, high stress rural gas gathering lines comply with the safety standards for Type B gathering lines and the emergency response plan requirements.<sup>47</sup> PHMSA recommended that operators of unregulated rural gas gathering lines comply with the federal incident and annual reporting requirements as well.<sup>48</sup>

As important, API has launched an effort to complement PHMSA's rulemaking process by developing a new consensus standard with recommended safety practices for rural gas gathering lines. That standard, API Recommended Practice 1182 (RP 1182), will contain provisions for the design, construction, testing, operation, and maintenance of larger diameter gas gathering lines in rural, Class 1 locations. API has also undertaken a separate effort to develop a new edition of RP 80, the industry standard that is incorporated by reference into Part 192 for purposes of determining the extent of onshore gas gathering operations. Various stakeholder groups are actively participating in both API efforts, including industry representatives, federal and state regulators, and environmental and safety advocacy organizations. PHMSA positively referenced API's progress in developing RP 1182 and the new edition of RP 80 in its recent presentation to the GPAC on onshore gas gathering lines.

The informal draft amendments override or contradict these efforts in several respects. Unlike PHMSA and the stakeholders developing API RP 1182, the Commission's proposed rules specifically target low-pressure, small-diameter rural gathering lines that do not present a

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<sup>43</sup> Texas Pipeline System Mileage, <https://www.rrc.texas.gov/pipeline-safety/reports/texas-pipeline-system-mileage/> (last updated Oct. 8, 2018).

<sup>44</sup> PHMSA included a three-year compliance deadline in its recent proposal to the Gas Pipeline Advisory Committee (GPAC) for regulating certain Class 1 gas gathering lines, and the GPAC voted to approve that compliance deadline. GPAC Meeting Voting Slides at 5 (June 25-26), <https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=143>

<sup>45</sup> Pipeline Safety: Safety of Hazardous Liquid Pipelines, 80 Fed. Reg. 61,610, 61,611-612 (Oct. 13, 2015).

<sup>46</sup> <https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=143>

<sup>47</sup> Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. 20,722, 20,808 (Apr. 8, 2016).

<sup>48</sup> *Id.* at 20,806.

legitimate risk to public safety. PHMSA has acknowledged that additional data is needed to support any further regulation of hazardous liquid gathering lines in rural areas, and that the regulation of onshore gas gathering lines in Class 1 locations should focus on larger diameter, high-stress pipelines. The API RP 1182 task group has followed PHMSA's lead and is developing recommended safety practices for larger diameter Class 1 gas gathering lines. Notwithstanding these efforts, the Commission is proposing to regulate 2-inch, 4-inch, and 6-inch gathering lines in rural areas without regard to operating pressure, proximity to buildings or places intended for human occupancy, or any other risk factors.

The reason that PHMSA and API are not targeting small-diameter, low-pressure gathering lines in rural areas in their respective initiatives is simple. Operators and regulators understand that industry resources needed to be used in a way that provides the greatest benefit to public safety. Requiring gathering line operators to comply with a series of new regulations that are targeted to pipelines that present little or no risk to public safety defeats that core objective. Diverting resources from high- or medium- to low-risk activities does nothing to fulfill the Commission's statutory obligations or protect the citizens of Texas.

**b. GPA Midstream and API Do Not Support the Proposed Additional Requirements for Larger Diameter, High Stress Class 1 Gas Gathering Lines**

The proposed additional requirements in § 8.110(c) for larger diameter, high-stress gas gathering lines in Class 1 locations do not satisfy the statutory requirements in H.B. 2982.<sup>49</sup> Proposed § 8.110(c) would apply the Part 192 regulations for transmission lines, except for the provisions in 49 C.F.R. § 192.150 relating to the accommodation of inline inspection tools and the integrity management provisions in subpart O, to Class 1 gas gathering lines greater than 12.75 inches in diameter with a maximum allowable operating pressure (MAOP) that produces a hoop stress of 20 percent or more of SMYS. In other words, these pipelines would be subject to the same regulations as Type A gathering lines.

While GPA Midstream and API agree that reasonable, risk-based safety standards should be applied to Class 1 gas gathering lines, these pipelines do not create the same risk to public safety as Type A gathering lines. Type A gathering lines pass through more populated areas, *i.e.*, Class 2 locations, Class 3 locations, and Class 4 locations, creating an additional level of risk that warrants compliance with the design, construction, initial testing, initial inspection, operation, and maintenance requirements for gas transmission lines. Class 1 gas gathering lines pass through remote (and in many cases completely unpopulated) areas and simply do not create a level of risk comparable to Type A lines. The Commission's proposal fails to recognize that distinction and undermines the risk-based philosophy that is embodied throughout the pipeline safety regulations.

The informal draft amendments would require operators of high-stress Class 1 gathering lines greater than 12.75 inches in diameter to establish an MAOP under 49 C.F.R. § 192.619. Because there is no grandfather clause for existing pipelines, operators would need to comply with

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<sup>49</sup> As discussed, *supra* note 41, the safety standards proposed by the Commission for Class 1 gas gathering lines must satisfy the risk-based criterion in H.B. 2982.

the design and test pressure limitations in 49 C.F.R. § 192.619(a)(1)-(2) to establish MAOP. Determining the design pressure of an existing pipeline that has never been subject to Part 192 and conducting new hydrostatic pressure tests of all high-stress Class 1 gas gathering lines greater than 12.75 inches in diameter would place a tremendous burden on the industry. And even if the Commission adds a grandfather clause that allows operators to use the highest pressure experienced during the typical 5-year window in establishing MAOP, it is likely that many operators will lack the monitoring equipment necessary to rely on that provision.

The compliance deadlines proposed in § 8.110(c) are unreasonable. The informal draft amendments would give operators one year from the effective date of the rule to determine if the provisions apply and three years from the effective date of the rule to achieve compliance with the applicable requirements. These deadlines are identical to what PHMSA recently proposed in applying a far narrower set of regulations, *i.e.*, the requirements for Type B gathering lines and the emergency response provisions in 49 C.F.R. § 192.615, to larger diameter, high-stress gas gathering lines in Class 1 locations.<sup>50</sup> The Commission's proposal would require compliance with all of the operations and maintenance requirements in subparts L and M and the operator qualification program requirements in subpart N. Given the additional burdens imposed in the Commission's proposal, operators should receive at least five years from the effective date of the rule to achieve compliance with the applicable requirements.

Finally, the proposed additional requirements in § 8.110(c) are premature as PHMSA is already developing federal regulations that would extend certain requirements to larger-diameter, high-stress gas gathering lines in Class 1 locations. A variety of stakeholders have been actively participating in that rulemaking process, and PHMSA recently obtained recommendations from the GPAC, the federal advisory committee that reviews proposed changes to the gas pipeline safety regulations, on the approach that should be considered in finalizing those regulations. The Commission should wait until PHMSA issues its new regulations before deciding whether to establish any additional requirements at the state level.

#### **c. GPA Midstream and API Support Extending Appropriate Reporting Requirements to Gathering Lines, Whether Regulated or Not**

Proposed § 8.110(d) would apply the Commission's incident and accident reporting requirements to Class 1 gas gathering lines and hazardous liquid and carbon dioxide gathering lines in rural areas that are not regulated by PHMSA. GPA Midstream and API support extending these reporting requirements to all gathering lines, provided the reporting forms are modified to eliminate unnecessary information and allow operators to account for unknown data. However, the accident reporting requirements should only be applied to pipelines that meet Part 195's definition of gathering line, *i.e.*, "a pipeline 219.1 mm (8 5/8 in) or less nominal outside diameter that transports petroleum from a production facility."<sup>51</sup> Pipelines that transport carbon dioxide, which is not petroleum, do not meet the definition of a gathering line and should be not subject to the same reporting requirements.

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<sup>50</sup> See *supra* note 44.

<sup>51</sup> 49 C.F.R. § 195.2.

Proposed § 8.115(a) would modify the new construction commencement reporting requirement by changing the prior notice provision from 30 days to 60 days, clarifying the one mile or more of pipe limitation, and adding the installation of any breakout tank as a triggering event. Proposed § 8.115(a) would allow operators to provide the notification as soon as practicable if the 60-day prior notice requirement cannot be met in an emergency. Language would also be added stating that a report expires if construction is not commenced within 8 months of the filing date, subject to a single request for a 6-month renewal.

GPA Midstream and API do not support changing the prior notice provision in the construction commencement report from 30 days to 60 days. The current 30-day deadline is reasonable and avoids unnecessary delays in construction projects. GPA Midstream and API also believe that the reporting criteria should be modified to align with the parallel PHMSA provisions, which only require construction reports for projects involving 10 or more miles of new or replacement pipe or costs of \$10 million or more.<sup>52</sup>

#### **IV. Conclusion**

GPA Midstream and API appreciate the opportunity to submit comments on the informal draft amendments to the gathering lines regulations. We offer our continued assistance to the Commission as it evaluates our comments and remain available to provide additional data or answer questions. If you have questions, please contact Matt Hite at GPA Midstream at (202) 279-1664 or by email at [mhite@GPAglobal.org](mailto:mhite@GPAglobal.org), or Dave Murk at API at 202-682-8080 or by email at [MurkD@api.org](mailto:MurkD@api.org).

Sincerely,



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<sup>52</sup> 49 C.F.R. §§ 191.22(c)(1), 195.64(c)(1).