GAS PROCESSORS ASSOCIATION

MIDSTREAM'S GREATEST RESOURCE

Tuesday, September 8, 2015

By electronic transmission

PHMSA Docket No. PHMSA-2013-0163
Docket Management System
U.S. Department of Transportation (DOT)
1200 New Jersey Avenue SE.
West Building, Room W12-140
Washington, DC 20590

Re: Notice of Proposed Rulemaking Concerning Operation Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Proposed Changes

Dear Sir or Madam:

Gas Processors Association ("GPA" or the "Association") is a non-profit trade organization made up of 125 corporate members. GPA's membership accounts for approximately 92 percent of all natural gas liquids ("NGLs") produced by the midstream energy sector in the United States. GPA members also produce, gather, transport and market natural gas and natural gas liquids.

On Friday, July 10, 2015 a Notice of Proposed Rulemaking ("Notice") was published in the Federal Register concerning several miscellaneous proposed changes to the pipeline safety rules. The primary and most substantial changes relate to the expansion of operator qualification ("OQ") requirements to construction and emergency response activities, additional training relating to control room management ("CRM"), and establishing a cost recovery mechanism for certain reviews of projects or designs.

GPA appreciates the opportunity to submit comments to the docket as its members have a significant interest in several key aspects of the proposal, specifically the expansion of OQ requirements, both in terms of fully applying the existing program to Type A and B gathering lines, as well as the removal of the four-part test. The midstream industry also has a desire to clarify the implications of the design review of new and novel technologies as many operators are either using or evaluating the use of composite pipe in their systems.

GPA has provided comments on the issues of greatest importance and overall impact to its membership. The Association would offer that, as drafted, the rule has significant unintended consequences due to the broad scope of the proposals. Further, the actual cost of the proposal far exceeds the projected $3.1 million cost offered by the Pipeline

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Hazardous Materials Safety Administration ("PHMSA") that will be incurred by industry when implementing such changes. Moreover, little, if any, justification has been provided to demonstrate how or why the proposed changes are reasonable or necessary.

For these reasons, GPA offers the following comments.

Confidentiality of Information

PHMSA proposes to create a new section §190.343 pertaining to the treatment of confidential information. Under the proposal, PHMSA seeks to establish a process by which an operator may request the confidential treatment of information provided to the agency. However, PHMSA does not specify what information would be held confidential, only that it will provide the operator notification of the decision at least five days before disclosing the information. In fact, PHMSA does not reference, explain, or otherwise provide any justification for such a provision in the preamble of the Notice.

GPA strongly objects to this proposal as drafted. Confidential information is exactly that - information that is intended to be private or secret. Pipelines are considered critical infrastructure and virtually every aspect of their operations could be deemed sensitive. While operators regularly provide information to regulators, the vast majority of the information is not for public consumption. It is unclear why any such information would therefore be made available to the public.

For example, under the Advisory Bulletin ADB-2014-03 concerning preconstruction notification, PHMSA has significantly expanded the list of activities that trigger the PHMSA notification. However, pipeline construction plans are often confidential -- and highly proprietary -- at the time such notification would be required to be made, as the notification would be in advance of finalizing a route and negotiating with landowners. As a result, making such information available before the projects are in the public domain has the potential to impact the feasibility of the project itself, as well as an operator's competitive ability in the marketplace, which ultimately impacts its shareholders. GPA would offer that it is not appropriate for PHMSA to be in a position to have this type of influence over information that is so sensitive, especially when the information does not directly relate to the immediate safety or operation of a system.

GPA understands the need for PHMSA to be transparent in its operations; however, making information public that an operator has deemed to be confidential— whether due to operational issues or for reasons of economic competitiveness— is inappropriate and unjustified. For this reason, GPA requests that proposed provision § 190.343 be removed from the final adopted rule so that it can be strengthened to provide the greatest amount of protection possible for sensitive information. There must be a strong procedure for protecting information that is Sensitive Security Information (SSI) or Protected Critical Infrastructure Information (PCII). GPA recommends this provision be developed after greater discussion and re-proposed in a separate, and later rulemaking.

Cost Recovery For Design Review

Over the past decade, the demand for new pipeline infrastructure has increased

substantially due to the increased development of domestic energy resources. As a result, the number of proposed pipeline projects has also increased, as well as the overall demand on PHMSA resources. PHMSA is seeking to adopt a new cost recovery mechanism that will apply to projects in excess of $2.5 billion and situations that use "new or novel technologies or design." PHMSA proposes to define "new and novel technology or design" as: "any products, designs, materials, testing, construction, inspection, or operational procedures that are not addressed in title 49 Code of Federal Regulations ("CFR") parts 192, 193, or 195 due to technology or design advances and innovation.'' This proposal raises many questions as currently drafted.

GPA members recognize the need to have a strong and well-funded regulatory agency. At the same time, creating an unchecked, and in some cases revenue-raising, mechanism for PHMSA is not the answer. GPA's core concerns relate to applying the cost recovery proposal to "new and novel technology and design." Specifically:

- As currently drafted, the proposal would permit multiple operators independently and separately to approach PHMSA to evaluate the use of identical new technology at the same time, but would require each operator to bear the full cost of the evaluation or review of that technology -- even though all operators would benefit from the same research or review for the identical technology. In other words, the cost of research would be paid for multiple times rather than being shared among several operators or across industry. Take for example, the development of leak detection-related technology. Many operators are seeking new tools -- whether equipment, technology, or both -- to assist them in their leak-detection abilities, and are investing significant funds toward that effort. The question that GPA poses to PHMSA is: At what point do all operators benefit from a technology such that it is inappropriate for PHMSA to deny industry the efficiency of shared investment in research and evaluation while engaging in duplicative cost-recovery?

- GPA would also raise questions regarding the point at which technology or design is no longer "new" and instead is "evolving." A prime example of this plastic pipe -- whether Polyamides or Nylon materials or even composites. Plastic and composite pipe have been around for decades. However, in recent years the number of available types of plastic being used, including a variety of composite materials, continues to evolve in the market place. Because many of these are not currently referenced in 49 C.F.R. 192, 193, 195, etc., they are all subject to the proposed cost recovery mechanism's definition of "new and novel" despite the fact that the technology has been around for a significant amount of time. At what point do operators benefit from previous research? And, at what point does the technology or design being evaluated cease to be "new or novel"?

- The terms and conditions of the proposed Master Cost Recovery Agreement (the "Agreement") do not relate to activities related to the reach and validation of "new or novel technology or design." The Agreement, as drafted, focuses solely on the design, construction, and inspection of large-scale pipeline projects. Further, the Agreement seeks to establish a "minimum" amount to be retained by PHMSA. However, there has been no information or guidance offered as to how much PHMSA can charge for such activities, or what is realistic in terms of the amount to be retained by PHMSA initially, as well as on an on-going basis. Further, PHMSA has drafted the Agreement in such a way that it could be interpreted to permit the

recovery of all PHMSA personnel salaries -- and not just the salaries of those directly involved in the design review. GPA does not believe this was PHMSA's intent, but requests that this language be amended to clarify that any cost recovery will be limited to the actual cost of the project review, including only the personnel directly involved in the review. The Agreement also lacks any deadlines or obligations for PHMSA to meet. Any agreement that requires a payment to be made for services should include parameters to ensure the review is timely. This will ensure the proposal moves through the process in a prescribed time period as long as the operator delivers the materials and responses necessary for PHMSA to move forward.

- GPA would also request that PHMSA clarify in which situations an operator should seek a special permit, and under what circumstances a waiver is needed. In theory, they result in the same thing -- the ability of an operator to manage under terms that are different than permitted by code. If that is the case, an operator should not be forced to enter into a cost recovery agreement with PHMSA because of their proposed "new or novel technology or design" in order to secure a special permit from PHMSA. Subjecting operators to cost recovery for "new and novel technologies or design" appears to be arbitrary in nature. Further, a special permit implies that the condition or operational configuration that would be approved by PHMSA could be revoked or expire. In many cases, operators seeking to use "new or novel technology" need to be assured of a permanent approval to use a particular appurtenance, material, or design component because being subject to the expiration or future additional reviews jeopardize the feasibility of the situation or solution being sought by the operator. For example, if an operator seeks approval for the use of composite pipe in a particular situation, which would be defined as the use of "new and novel technology or design" according to the rulemaking, the operator would be forced to use the special permit process as currently proposed. However, that operator would be reluctant to use the composite pipe even if a special permit is granted because of the lack of regulatory certainty. Operators need assurance that once the pipe is placed in the ground it will be allowed to stay there permanently or until the operator chooses to remove it -- and not be subject to further direction by PHMSA to pull it out and replace with a different product.

GPA would suggest that these issues cannot be addressed through changes in the final rule as any additional information, revisions, or guidance would be substantially outside of the proposed notice of rulemaking. GPA would also submit that in the Notice, this provision was actually referenced as an "Advanced Notice of Proposed Rulemaking," which seems to indicate this proposal was meant to be put forth for comment in advance of this Notice. As a result, GPA respectfully requests the provisions relating to "new and novel technology or design," including the definition and applicable cost recovery sections, be deleted from the final rulemaking to permit additional discussion and appropriate revisions to the proposal that will clarify the intent and applicability of the requirement.

Immediate Notice of Incidents

The Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011 (the "Act") requires PHMSA to establish a new standard by which incidents meeting the thresholds in

49 C.F.R. 192 and 195 are formally reported. Specifically, operators will have to report any such incident, at the "earliest practical moment." Under the Notice, PHMSA proposes to further clarify this Congressional directive. GPA seeks to raise two concerns regarding this proposal. The first relates to the definition of "discovery," and the second pertains to the requirement to reconfirm the initial report.

The proposed definition in 49 C.F.R. 191.3 and 195.2 states: "Confirmed discovery means there is sufficient information to determine that a reportable event may have occurred even if an evaluation has not been completed." This definition is contradictory, as one cannot "confirm" anything that "may" have occurred. The use of the word "may" in this context implies something that is possible but not definite. By contrast, the word "confirmation" relates to the absolute determination of the truth or accuracy of a statement -- or, in this case, an event. A definition that triggers immediate reporting to the National Response Center should be based on a "confirmed" incident, not a possible, or even probable, incident. In addition, there is the very real likelihood that the pipeline company representative who initially confirms a release will have absolutely no way to calculate -- much less verify -- the amount of the release, or even determine whether the release is reportable. For these reasons, GPA respectfully requests that the definition of "confirmed discovery" be revised to replace the word "may" with "has."

GPA would also request that PHMSA clarify the applicability of the reporting requirement to events described in §195.50 and §195.52, which are distinctively different. Unlike §195.52, events outlined in §195.50 do not require the immediate reporting of certain accidents to the National Response Center. On the other hand, §195.52 expressly identifies those events, which do trigger immediate notification. Having two separate requirements for similar events implies that there is indeed a difference in the need for the immediate notification of some incidents. As a result, PHMSA should clarify that any new reporting requirements apply to only those circumstances requiring immediate notification contained within §195.52.

With regard to GPA's second concern, PHMSA is proposing to require operators to "revise" or "confirm" the initial report within the first 48 hours. GPA questions the necessity of an operator reconfirming information that remains accurate. During an emergency, every second counts. Taking time to make a second phone call to confirm the accuracy of information that has already been conveyed is a waste of time and resources. The Act does not require such a report and even states such an update only be made "to the extent practicable." For these reasons, GPA requests the final rule be revised to only require a second call to the National Response Center if the information has substantially changed or additional information pertinent to the response become available.

The language should be revised accordingly:

§ 191.5 and § 195.52 Immediate notice of certain incidents.

(c) Within 48 hours after the confirmed discovery of an incident, and to the extent practicable, an operator must revise the initial telephonic notice required in paragraph (b) of this section.

Requirements Applicable to Gathering Lines

PHMSA has proposed to expand the full OQ requirements to those gathering lines found in Class 2, 3, or 4 locations. The justification offered by PHMSA for this change is that current requirements "fail to ensure that individuals possess the requisite knowledge, skills, and abilities to perform the actual work." While GPA respectfully disagrees with this statement, it does not object to the proposed change as many operators have implemented comprehensive OQ programs in accordance with their safety programs. That being said, GPA requests that ample time be provided in the final rule to ensure that all gathering operators have the time needed to ensure their programs meet not only the current OQ requirements, but the expansive new requirements proposed in this rulemaking. As outlined below, in the section pertaining to the proposed changes to OQ requirements, the ambiguity of the changes will have a significant impact on the cost, burden, and overall scope of any operator's OQ program. As a result, industry will need enough time to review, plan, redraft, and implement updated programs.

Control Room Management

PHMSA references three proposals to amend existing requirements pertaining to control room management. However, as described in the preamble, and then in the actual proposed regulatory language, several of the concepts do not appear to follow the stated intent, which results in much confusion as to the actual scope, and ultimately the impact, of the proposed changes. The corresponding provision of the proposed rules can be found in new §192.631 and §195.446(b)(5). Specifically, the provision seeks to add language regarding "[t]he roles, responsibilities and qualifications of others with the authority to direct or supersede the specific technical actions of a controller." However, the preamble states that under the proposal "operators need to declare the roles, responsibilities, and qualifications of all others who, at times, could intervene in control room operations." GPA would question why additional clarification is necessary, and note the disconnect between the stated intent in the preamble and the actual language of the proposed rule. Most importantly, the language used to describe the intent and purpose of the change differs in a meaningful way. The interpretation could lead to confusion as to the overall scope and applicability of the proposal.

Further, "roles and responsibilities" are already defined by the current provision of subpart (b) of the respective Code. Establishing a strict list of those who can override a controller could potentially paralyze a controller in an abnormal, or emergency, situation, which no operator or agency wants. Every company has its own chain of command, which can fluctuate. Tying an operator's hands is not in the best interest of safe operations during a fluid situation, especially where there are questions as to the meaning of the words "direct," "supersede," "intervene," and "technical actions."

The additional change to control room management requirements pertains to a new training requirement for those potentially interacting with controllers. GPA believes that the proposed change is overly broad, which potentially results in extensive unintended consequences. As explained in the preamble, PHMSA seeks to require "all individuals who would reasonably be expected to interface with controllers" -- a group that "could include technical advisors, engineers, leak detection analysis, and one call support" -- to participate in team training exercises. (See page 39919 of the Federal Register). The proposed changed is the result of a National Transportation Safety Board ("NTSB") recommendation issued on July 25, 2012 which directed PHMSA to "[d]evelop

requirements for team training of control center staff involved in pipeline operations similar to those used in other transportation modes." GPA would suggest that the list of people that could "reasonably be expected to interact" with controllers varies greatly from operator to operator. Controllers at large operators will likely be in a very protected environment due to larger staffs and departments to handle various aspects of operations. Smaller to mid-size operators will likely have individuals who cover multiple areas or assignments and could likely be in communication with a controller for various reasons.

GPA would offer the following as an alternative to the currently proposed provisions as an easy modification to clarify the scope of such a requirement, one that would align with that of the NTSB recommendation.

§ 192.631 and § 195.446 Control room management
(6) Control room team training and exercises that include both controllers and other control room staff who would reasonably be expected to interact (control room personnel) during normal, abnormal, or emergency situations.

A third reference to CRM can be found on page 39925 of the proposal. A bullet in the middle column states PHMSA is proposing to "modify operator qualification requirements including addressing a NTSB recommendation to clarify OQ requirements for control rooms…" However, there is no reference found in the OQ section of the proposed rules and as a result it is unclear how an operator's OQ program would be impacted by either of the proposed control room management proposals. For this reason, GPA respectfully requests PHMSA issue a statement in the final rule that the changes made to control room management will not have an impact on an operator's future OQ program.

Farm Taps

GPA appreciates the PHMSA proposed changes to the applicability of distribution integrity management to that of farm taps. Farm taps have historically served rural locations, whether farms, private residences, or other facilities that have not had traditional natural gas service. The proposed changes are a positive step forward in acknowledgement of the fundamental difference between a farm tap and traditional distribution operations covered by the Distribution Integrity Management Program, or DIMP.

That being said, there are two minor changes that GPA recommends regarding the applicability of certain requirements that will provide greater clarification of the proposal. First, PHMSA should clarify proposed subpart, §192.1003(b), does not apply to a service line that directly connects with an upstream production, gathering, or transmission pipeline. Making this change would provide greater clarity on which service lines are within the exception. GPA would also suggest a five year interval for inspection of farm taps going forward.

GPA also supports comments made by the Texas Pipeline Association (TPA) concerning §192.740 relating to pressure relief devices and the exception referenced above. As drafted, §192.740(a) could be interpreted to exempt additional lines from the requirements of the section. The clarification suggested by TPA, and found below, seeks to clarify the applicability of the requirement as well as permit distribution operators to

continue to manage their farm taps under the distribution integrity management program.

Proposed revision to 192.740(a):
"§192.740 – Pressure regulating, limiting, and overpressure protection – individual service lines directly connected to an upstream production, gathering or transmission pipeline**.**

(a) this section applies, except as provided in paragraph (c), to any service line that is directly connected to an upstream production, gathering or transmission pipeline and is not operated as part of a distribution system."

Operator Qualifications

GPA acknowledges the need to expand OQ requirements with respect to construction activities. Industry has the highest interest in ensuring the safety and integrity of all pipeline systems from the time they are built to the point when they are decommissioned. At the same time, the proposal, as drafted, is simply unworkable as it has the ability to completely overwhelm the system. Members of GPA have identified issues with at least six aspects of the OQ proposal. Each are listed below, with the exception of the discussion on cost, which is covered in more detail in the section of these comments pertaining to cost benefit analysis.

Concern 1 - Removal of the Four-Part Test

Current OQ requirements have established a clear test by which tasks and job responsibilities are evaluated in order to determine whether OQ applies. However, under the proposed rule, those standards are completely eliminated in favor of a standard that is so broad and ambiguous that it essentially results in a complete disregard for more than a decade of experience and overall knowledge of the existing OQ rule, processes, and applicability.

The preamble of the rule states, in relevant part: "While the current performance based regulations provide flexibility for each operator to identify those particular repair tasks, the proposed rule to define covered tasks is clearer and helps to eliminate confusion over whether performance based tasks are 'performed as a requirement of this part'." It goes on to state the changes are not "significant." GPA respectfully offers that as currently drafted, the proposed OQ provision applies to virtually every aspect of the design, construction, and operation of a pipeline. The proposal states: "Covered task means an activity identified by the operator that affects the safety or integrity of the pipeline." Arguments can be made that virtually every employee of a pipeline operator would now fall under OQ, with the exception of accounting and human resources.

This is further reinforced by the sentence that follows the above statement: "A covered task includes, **but is not limited to** the performance of **any** operations, maintenance, construction or emergency response task." (Emphasis added.) Including the words "but is not limited to" and "any" implies a broad and potentially limitless applicability. Operators are then placed in the impossible situation of taking a limited interpretation of the

language, potentially facing criticism and fines at a later date. Alternatively, operators would be forced to pursue widespread coverage in order to take the most conservative position — one that is costly, time consuming, and overly burdensome.

The current four-part test includes a provision that limits OQ to those tasks "performed **ON**" a pipeline facility." (Emphasis added.) That limitation is no longer present in the proposal, and as a result of the above language and the elimination of the word "on," further reinforces the expansion of the OQ requirements far beyond their current scope. This departure from a specific objective that clearly outlines the types of roles and tasks covered will result in operators having to completely overhaul and significantly expand their current programs.

GPA would respectfully suggest these broad and overreaching changes appear to have been made without specific anecdotal evidence that OQ requirements, or the lack thereof, have resulted in the safety or integrity of pipelines being jeopardized. While GPA is not opposing the expansion of OQ requirements to construction activities, PHMSA has not offered any information that leads GPA to support further expansion of the regulatory requirements as no nexus has been established between historical incidents and that of OQs. While GPA appreciates the need to address potential leading indicators, doing so in such a sweeping and costly manner is unjustified.

Concern 2 - Application of Requirements to Emergency Response

One of the primary changes to the proposed OQ regulations is the extension of the requirements to emergency response. As proposed, emergency response is defined to include tasks related to operations and maintenance activities that could "reasonably be expected to be performed during an emergency to return the pipeline facilities to safe operating conditions." There is no further information or discussion in either the preamble, or the actual proposed rule. This leaves the interpretation to operators with little guidance as to what it means other than historical references to emergency response under the Code.

As it is currently used, the term "emergency response" can be applied to both internal and external stakeholders. GPA would suggest that PHMSA does not intend to extend these OQ requirements to external responders or agencies, as it would be impossible to qualify all potential emergency responders. Industry has dedicated substantial resources to conducting outreach to emergency responders and other key stakeholder groups. From those efforts it is clear that there are very real limits to what emergency responders and other can be compelled, or even requested, to do. As a result, seeking to apply OQ requirements to external responders is simply unrealistic.

Taking the above into consideration implies that PHMSA intends to define "emergency response" in a manner that pertains to representatives of the company -- internal personnel, contractors, or possibly a subcontractor could be asked to respond to a potential or known incident. As described earlier, this definition is incredibly broad and potentially places operators in a dangerous and impossible position in the event an actual emergency occurs. If this concept is applied broadly, countless numbers of new personnel and contractors become subject to OQ requirements, but also to drug and alcohol requirements. The burden and resulting cost, if quantifiable, is staggering.

More importantly, this ultimately places operators and their personnel in a potentially tragic and impossible moral position in the event of an emergency. Imagine a pipeline release occurs. The operator has personnel near the site, but those personnel have not been qualified for emergency response even though they are willing and able to assist. Under the proposal, the operator would be faced with the decision of ordering those personnel to stand down (with the attendant risks to life, the environment, and property), or face regulatory scrutiny, fines and penalties, and even prison as a result of ordering its personnel to act to rapidly minimize impact of such an event. That is a position that no one wants, and PHMSA should be the first to acknowledge this. Legislative bodies and courts have already established standards regarding situations of this nature and made it clear that those seeking to help during any type of an emergency are protected under Good Samaritan laws, and this should be no different.

Further, the proposed definition covers activities that "could reasonably be expected to be performed during an emergency to return the pipeline facilities to a safe operating condition." "Returning to service" activities are already covered by other aspects of an operator's start-up and shutdown procedures. It is not necessary to amend these existing expectations in any way. GPA would suggest that a proposal of this nature reinforces the importance of retaining the existing OQ four-part test. Without the test, the proposal could be unlimited in scope and impact. The existing test and regulatory requirements are robust enough to accommodate actions, specifically repairs, occurring after an emergency occurs. By contrast, the unintended consequences of making the proposed changes are simply too great to merit their adoption.

Concern 3 - Definition of "Knowledge, Skills, and Ability"

The current OQ requirement establishes the manner in which personnel can be qualified to perform a particular task. The list of processes is identified in the definition of "Evaluation" found in 192.803 and 195.503. PHMSA has proposed additional definitional language regarding "knowledge, skills and ability" to further clarify what it means to "perform a task." The proposal states and a qualified individual "has ability to perform mental and physical activities developed or acquired through training, and has the mental and physical capacity to perform the task." This is further reinforced through the proposed definition of "qualified," that adds provision (e), which states the person must "meet the physical abilities required to perform the specific covered task." Adding a component to the current OQ program that requires the "physical activities" of all employees to be confirmed is a significant expansion of the expectations and requirements for most personnel. It will require operators to develop mechanisms to test and determine the strength, stamina, and overall physical and mental state of employees — a task that equates more to the training of a professional athletic team opposed to a pipeline operator in the field. Under the proposed requirement, operators responsible for the operations and maintenance, and likely construction of a pipeline system would be required to assume human resource type job responsibilities. There are all types of laws relating to confidentiality, discrimination, and health information (just to name a few) that would then also become applicable. The result would be more training and qualifications — a system of never-ending bureaucracy that shifts the focus of pipeline safety to that of paperwork, which no one wants. It also creates the potential for lawsuits from employees who have loyally and diligently cared for pipelines for decades who may not be considered "fit for service" under the new requirements.

PHMSA offers no information or justification pertaining to this requirement in the preamble. GPA would suggest that there is no reasonable justification for such a requirement, nor has there been any level of discussion regarding this considerable requirement. The existing rule includes a provision that ensures an operator program has a mechanism to identify those employees who do not meet the desired standards. Without explanation, or some level of understanding as to what exactly is being proposed by PHMSA, operators have no choice but to interpret the rule literally, which will likely have a significant impact on the ability to find and retain employees who are not only able to understand and complete pipeline operations tasks, but also meet certain arbitrary health and physical qualification standards.

To address these issues, GPA recommends the definition of "knowledge, skills, and ability" is either deleted from the rule or amended to read as follows:

§ 192.803 and 195.503 Definitions.

Knowledge and skills as it applies to individuals performing a covered task, means that an individual can apply information learned through training and/or observation to the performance of a covered task.

Provision (5) under the proposed definition of "*Qualified" would also have to be deleted from the proposal.*

Concern 4 - Overly Broad Expansion of Operator Qualifications

GPA was able to find references to OQ in regulatory proposals dating back to 1994. The most recent requirements, which have been in place since 2004, have a well-defined four-part test by which operators can evaluate whether a specific action or process taken by personnel must be covered by OQ. (See comments relating to Concern 1 above.) In addition to removing that standard, PHMSA is proposing to create an expanded definition of "Qualified". Under that definition, provision (3) is added and states that an operator must "[d]emonstrate technical knowledge required to perform the covered task, such as: equipment selection, maintenance of equipment, calibration, and proper operation of equipment, including variations that may be encountered in the covered task performance due to equipment and environmental differences." This too results in a significant expansion of the OQ program to activities far in excess of operations and maintenance activities. Operator qualifications are based on the American Society of Mechanical Engineers Standard relating to qualifying pipeline personnel, also referred to as B31Q. However, PHMSA has consistently elected not to adopt the standard in its entirety as provisions extend into the design and manufacturing process. Yet, as drafted, the rule includes tasks that relate to "equipment selection." GPA respectfully asks PHMSA to evaluate why it is suggesting an expansion of the standards in a manner closer to that of B31Q when it has previously declined concepts in that standard. If PHMSA does not seek to adopt standards for activities other than the actual operations or maintenance of the pipeline, PHMSA should revise the proposal to remove this reference to the selection of equipment. GPA recommends the following change to the proposal:

§ 192.803 and 195.503 Definitions.

Qualified as it applies to an individual performing a covered task, means that an individual has been evaluated and can:…

(3) Demonstrate technical knowledge required to perform the covered task, such as: calibration and proper operation of equipment, including variations that may be encountered in the covered task performance due to equipment and environmental differences;…

Concern 5 - Effectiveness Evaluation Requirement

PHMSA also proposed extensive new effectiveness requirements that will require operators to determine the effectiveness of their OQ programs. Thirteen situations that "adversely affect the safety and integrity of the pipeline" will have to be actively tracked and evaluated. Effectiveness measurement is not new to the pipeline industry. While only formally required for public awareness programs at this point, aspects of measurement can also be found in damage prevention and safety management systems. The difference between this proposal and others is that specific evaluation matrices have not been established. For example, under the proposal, only situations that have "adversely" impacted the pipeline must be included in the effectiveness evaluation. An operator could, and will hopefully have, periods of time where none of the 13 situations actually trigger an adverse impact to a pipeline. Under the proposal, no further information is necessary. The proposal does not establish how to determine a program's effectiveness, and offers no other guidance as to what is required, or how an operator's evaluation will be evaluated by PHMSA.

Additionally, PHMSA has not prescribed intervals by which the program must be evaluated. GPA members would submit that the existing process of qualifying individuals on an ongoing basis is not susceptible to the proposed effectiveness measurements, due to the inability to establish a common baseline. For example, some qualifications may only be necessary every five years. If an evaluation is to occur every four years, there may be no meaningful data available by which an operator can evaluate its programming. For these reasons, GPA suggests the proposal be clarified to require that effectiveness evaluations occur only post-Incident or Accident in order to ensure that meaningful information is gathered concerning the actual implications of personnel and operator qualifications related to the incident. This will permit the operator to focus on the issues that need to be changed, addressed, or improved going forward.

§ 192.805 and **§195.505 Qualification program**

(b) *Program requirements.* The operator qualification program must, at a minimum, include provisions to:…

(12) Develop and implement a process to review the program's effectiveness in accordance with § 192.805 /§ 195.505 post-Incident/Accident.

Concern 6 - Submittal of Program to PHMSA and Time to Implement Changes

PHMSA includes several provisions regarding the revision of an operator's qualification program and timing throughout the proposal. In particular, that an operator must notify PHMSA, or the appropriate state agency, if significant changes are made to its program.

This requirement will likely impact the ability of an operator to implement the final rule in a timely manner. As defined by new section (c) of 192.805 and 195.505, if an operator "significantly modifies" the program after it has been verified that it complies with this section, it must be resubmitted. GPA would offer that after considering all of the issues identified throughout these comments, as well as those offered by other associations, it will be very difficult for any operator to implement the final rule and not have it be considered "significantly modified." Under the proposal, operators will be required to re-evaluate their entire programs, rewrite those programs in accordance with the review, and then submit the changes to at least one regulatory body. As a result, the additional review and scrutiny of the appropriate regulatory body will take time.

Additionally, the most significant unintended consequence of the proposal is that of the retraining of not only employees, but also contractors. Operators will be forced to re-qualify all personnel for every identified task, and the existing portability of the programs for and between contractors will be lost. The impact of this cannot be overstated as it could potentially bring the entire industry to a halt due to the daunting task of qualifying tens of thousands of people (there are currently approximately 76,000 with some level of OQ currently in the U.S. according to Veriforce) under new, currently unquantifiable numbers of tasks.

For these reasons, GPA recommends that the implementation period should be elongated and tiered. This will ensure that operators have enough time to review their program and consider changes consistent with the final adopted rule. Once this occurs, but before an operator implements the changes, the updated program can be submitted to the appropriate regulatory agency or agencies. As the agency or agencies accept the modified program, the operator can begin implementation as appropriate. If it is not acceptable, the operator will have additional time to make further revisions to the plan, and seek approval of the plan as needed.

GPA would suggest that PHMSA adopt, at a minimum, a five to six year time frame for the implementation of the proposal as currently drafted. This would permit operators a year to review their existing OQ plans to determine what changes are necessary. Another year for operators to rewrite their programs and submit them to PHMSA. A year for PHMSA to review and provide approvals or directives to the operator necessary to gain approval, leaving two to three years for operators for the full implementation of affected employees and contractors per the regulation.

Summary and Proposed Alternative Language Relating to Operator Qualifications

For all of the foregoing reasons, GPA submits the following adjustment to the existing four-part test. This would accommodate the goals and intent of PHMSA with respect to the proposed rule and could be accomplished within the existing Notice of Proposed Rulemaking framework.

§192.801 & 195.501 Scope.

(a) This subpart prescribes the minimum requirements for operator qualification of individuals performing covered tasks on a pipeline facility.

(b) For the purpose of this subpart, a covered task is an activity, identified by the operator, that:

(1) Is performed on a pipeline facility;

(2) Is a **construction,** operations, or maintenance task;

(3) Is performed as a requirement of this part;

(4) Affects the operation or integrity of the pipeline

Reversal of Flow or Change in Product

PHMSA has released several documents and Notices relating to the reversal of flow of a pipeline. PHMSA has proposed to expand the list of items that require notification to the Agency to that of flow reversal or a change in product transported in addition to the replacement of 10 or more miles or pipe. GPA would offer that not all operators will have advanced notice of prolonged flow reversal. Gathering systems are reactive to market demands and the needs of transporters. Operators will not always have the ability to provide advance notice as provided by the proposed rule. Further, it is unclear what PHMSA deems to be "bi-directional flow." For these reasons, GPA suggests that a provision be added to permit reporting in cases of unplanned or unanticipated reversals.

Cost Benefit Analysis

In the process of developing and actually proposing a new rule, PHMSA must estimate the cost borne by industry and other stakeholders as a result changes. According to the Notice of Proposed Rulemaking and accompanying Regulatory Impact Analysis and Initial Regulatory Flexibility Act Analysis, all of the proposed changes offered will result in a $3.1 million impact to industry. GPA would offer this number significantly understated the impact to industry by tens of millions of dollars. In computing the potential cost, particularly with respect to the proposed expansion of operator qualification standards, PHMSA considered only the number of pipeline operator employees and not that of all contractors and construction vendors. There are currently approximately 16,000 employees of operators subject to OQ requirements according to one of the largest vendors, Veriforce. However, there are another 60,000 (and likely more) contractors who are currently subject to the existing requirements. These numbers do not reflect those employees and contractors who will be captured by the program requirements going forward under the proposed changes. Taking this information into account, and applying the currently accepted annual cost of $150 per person, this results in an annual cost of at least $11.4 million, which is borne by industry. When taking into further account the number of tasks that will be required to be covered due to stated Concerns 1-4 in the OQ standards above, this amount will likely double, if not triple, or quadruple. As a result, the estimated cost can conservatively be estimated to be between $22.8 and $45.2 million for just the tasks, and not include the review and revamping of all operators plans no less all of the other regulatory changes contained within the proposal.

Despite this known and quantifiable cost, PHMSA does little to offer justification for the significant expansion of the program, or that of other changes contained within the proposed rule. As stated above, GPA is not against subjecting those involved in the

construction of pipelines to OQ programs. However, the proposal is significantly broader than construction.

When PHMSA (at that time the Office of Pipeline Safety) first proposed large-scale OQ requirements, it provided a laundry list of specific pipeline incidents where human error was a direct factor in the release. That was nearly thirty years ago and the level of training, regulatory requirements, and overall operator expectations for employees have changed greatly. This is reflected in the reduction of the number and significance of incidents occurring and the causes of pipeline incidents shifting away from human error. Unlike the proposal in 1987, this Notice of Proposed Rulemaking does not outline specific reasons for elimination of the four-part test and the expansion to emergency response activities, no less the broad expansion of the requirement. GPA would offer it is very difficult to understand why members should be forced to make such sweeping changes to their OQ program, while also bearing the increased cost, with no demonstrated benefit or justification for doing so. GPA would suggest that resources -- whether time, funding, or both -- should be dedicated to those issues which are known to directly and immediately impact the safety and integrity of the systems today.

GPA appreciates the opportunity to submit these comments to PHMSA. The Association and its members look forward to working with the Agency as it finalizes and implements these rules. Please contact me if GPA can be of assistance to PHMSA as this effort moves forward. I can be reached at (918) 493-3872 or mhite@GPAglobal.org.

Sincerely,

Matthew Hite
Vice President of Government Affairs