

Five Questions About PHMSA's Proposed Rules for Gas Transmission and Gathering Lines

On March 17, 2016, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a pre-publication version of its long-awaited notice of proposed rulemaking (NPRM) for gas transmission and gathering lines. More than four years in the making and released against the backdrop of a dramatically changing domestic landscape for the natural gas pipeline industry, the NPRM responds to issues raised in National Transportation Safety Board (NTSB) recommendations, congressional mandates, and Government Accountability Office reports. PHMSA has provided a short, 60-day comment period, which will be a challenge to those developing comments on a proposed rule of this complexity and length. It is likely that a number of stakeholders will seek an extension of the comment period. While a comprehensive analysis of the 549-page proposal will take more time, Babst Calland's Pipeline and HazMat Safety team has initially identified five questions that operators may wish to ask about the NPRM.



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1. Overall: What's the big picture?

- PHMSA is proposing significant changes to the regulations for gas transmission and gathering lines.
- Key changes would establish new materials verification requirements for certain onshore gas transmission lines, modify maximum allowable operating pressure (MAOP) requirements for all gas pipelines, and impose strict requirements for verifying the MAOP of certain pipelines.
- PHMSA is also proposing to modify the regulations for onshore gas gathering lines, in part to address the rapid development of the nation's shale plays.
- Other noteworthy proposals relate to corrosion control, integrity management, and new assessment and repair requirements for pipelines outside of High Consequence Areas (HCA), in newly-defined Moderate Consequence Areas (MCA).
- A key question in the coming weeks is whether PHMSA's proposals are justified and have a rational connection to the evidence in the record. It will also be important to determine the actual impact of the new and changed regulations in the broader context of Part 192.

2. Cost Benefit Analysis: Do the numbers add up?

- PHMSA acknowledges that it is becoming more difficult to justify the cost of new regulations because the safety record of the pipeline industry has significantly improved.
- PHMSA is claiming that the MAOP and materials verification provisions in the NPRM will create economic benefits for the gas pipeline industry by providing relief from the strength testing requirements in the current design regulations. However, it is not clear that these design requirements actually apply to many existing pipelines given the anti-retroactivity provision in the Pipeline Safety Laws, which prohibits the imposition of design, construction, and initial testing requirements to pipelines constructed before those requirements were put in place.

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- In a nod to the Obama Administration's methane emissions reduction initiative, PHMSA has counted greenhouse gas reductions in its analysis of the benefits of a rule.
- PHMSA's cost benefit analysis has not yet been made available. Watch for PHMSA's preliminary Regulatory Impact Analysis, which should be available in the docket soon.

3. Onshore Gas Gathering Lines: Is my line regulated?

- PHMSA is proposing to change the definition of an onshore gas gathering line, to partially repeal the longstanding exemption for rural gathering lines, and to extend the federal reporting requirements to all gas gathering lines (whether regulated or not).
- While the new proposal for determining whether a pipeline qualifies as a gathering line appears to draw on many of the concepts in the existing regulations, two important changes are notable. First, the gathering function would begin at a point closer to the wellhead in many cases, thereby narrowing the extent of exempt production operations. Second, new restrictions would be imposed on the use of the incidental gathering designation, potentially expanding the universe of transmission lines in the midstream sector.
- PHMSA would also regulate certain rural gathering lines for the first time. Under the NPRM, gathering lines in Class 1 areas that are eight inches or more in diameter and that have an MAOP that produces a hoop stress of 20 percent or more of specified minimum yield strength (SMYS) for metallic lines, or more than 125 psig for non-metallic lines, would be regulated under Part 192. These lines, designated by PHMSA as "Type A, Area 2" gathering lines, would be subject to the same safety standards that currently apply to lower-stress, "Type B" gathering lines, as well as the emergency response requirements in Part 192. Operators of these pipelines would also be subject to PHMSA's Part 199 drug and alcohol requirements.
- PHMSA is proposing that operators of all gathering lines, whether regulated or not, comply with the federal registration and reporting requirements in 49 C.F.R. Part 191.
- According to the limited information provided in the NPRM, the 15-year cost of complying with the proposed gathering regulations exceeds the benefits. Again, be on the lookout for a more detailed examination of these questions in the Preliminary Regulatory Impact Analysis for the proposed rule.
- Operators of production and gathering lines constructed with composite pipe materials should also stay tuned. The compliance issues raised in applying Part 192 to lines constructed with these materials, which are not approved for use under the federal rules, are not addressed in the NPRM.

4. Materials Verification: What is the scope?

- Keying off of 2011 congressional mandates and PHMSA's 2013 Integrity Verification Program (IVP) initiative, the agency is proposing new requirements for operators to verify the materials properties of their pipelines through destructive (pipe spool cutouts, not coupons) or non-destructive tests (through validated protocols that must meet accuracy requirements).
- On its face, the new provision would apply only to pipelines in HCAs or Class 3 or 4 locations. However, there are cross references to the materials verification rule in several of PHMSA's other proposals that apply to all transmission lines, which raise significant questions about the intended scope of these new requirements. Would materials verification apply more broadly to all transmission pipelines, and even some gathering lines?
- A careful review of the materials verification proposal, in the context of the broader changes to Part 192, will be necessary to determine whether these new regulations have a rational connection to the science the facts.

5. MAOP Verification: Where and when does it apply?

- PHMSA's MAOP verification proposal would apply to pipelines in HCAs, Class 3 or 4 locations, and, in some cases, newly-defined MCAs, where the pipe has had an in-service incident due to certain kinds of defects, where pressure test records are not reliable, traceable, verifiable and complete, or where a pipeline MAOP was set based on the grandfather clause (192.619(c)).
- The MAOP verification provision is likely to have a greater effect on older transmission pipelines.
- Following on its policy proposals from the 2013 IVP proceedings, PHMSA would require operators to reestablish MAOP using one of several methods, *i.e.*, pressure test (with a spike test in some cases), de-rate, Engineering Critical Assessment, pipe replacement or alternative technology.
- While the scope provision of the MAOP verification rule appears to spare rural transmission lines from verification, PHMSA suggests in the NPRM that it would apply the design-stage materials strength regulations (192.107) to these facilities. Again, there are questions about whether the anti-retroactivity provision in the Pipeline Safety Laws would allow this approach. This is a significant issue that bears watching.
- PHMSA would keep the grandfather clause in place for lower-risk pipe outside of HCAs and MCAs.
- Regardless of the method used to establish MAOP, PHMSA would require operators to have reliable, traceable, verifiable and complete records to support MAOP.
- PHMSA also proposes changes to the MAOP regulation (192.619) for all gas pipelines, and those changes are likely to make demonstrating MAOP more difficult.

PHMSA's proposal contains many other significant changes and additions to the gas pipeline safety regulations. Please contact a member of Babst Calland's Pipeline and HazMat Safety team if you would like more detailed information about PHMSA's proposal or its implications.



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James Curry and Keith Coyle lead Babst Calland's Pipeline and Hazardous Materials Safety Practice in Washington, D.C. Jim and Keith counsel pipeline and midstream companies, gas utilities, terminal operators, investors, trade associations, and other stakeholders throughout the United States. They both served as attorneys for the Pipeline and Hazardous Materials Safety Administration (PHMSA), the federal agency that oversees the safety of the country's growing network of gas and hazardous liquids pipelines. Through their combined 18 years of PHMSA practice, Jim and Keith have direct experience with a multitude of pipeline and hazardous materials safety issues involving compliance, regulatory and legislative affairs, strategic counseling, enforcement, litigation, and audit preparation.