

## PHMSA Releases Proposed Rule Addressing 2020 Pipes Act Gas Distribution Mandates

On September 7, 2023, the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) published in the *Federal Register* a Notice of Proposed Rulemaking (NPRM) titled, “[Pipeline Safety: Safety of Gas Distribution and Other Pipeline Safety Initiatives](#).” The NPRM implements provisions from the [Leonel Rondon Pipeline Safety Act](#) – part of the Protecting Our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2020 – as well as a National Transportation Safety Board (NTSB) [recommendation](#) issued in response to an incident that occurred on a gas distribution pipeline system in Massachusetts’ Merrimack Valley on September 13, 2018.

PHMSA proposes to revise certain pipeline safety regulations in 49 C.F.R. Parts 191, 192, and 198. While the NPRM focuses largely on gas distribution pipelines, PHMSA also proposes changes that would apply to all Part 192 regulated pipelines, including gas transmission and gathering pipelines. Finally, PHMSA proposes to apply annual reporting requirements to small liquified petroleum gas (LPG) operators.

Comments on the NPRM are due on November 6, 2023. Key aspects of the NPRM include:

### ***Proposed Amendments to Part 191 Reporting Requirements:***

- PHMSA proposes to collect additional information from operators of distribution lines, such as the number of miles of low-pressure service lines, including their overpressure protection methods. For small LPG operators, PHMSA also proposes to collect information on the number and miles of service lines, and the disposition of any leaks. The reporting requirements for LPG operators are proposed in lieu of an integrity management program, as discussed below.

### ***Proposed Amendments to Part 192 Safety Requirements:***

#### General

- PHMSA proposes to eliminate certain amendments to Part 192 that the Agency adopted in response to the U.S. Court of Appeals for the D.C. Circuit’s (D.C. Circuit) decision in *GPA Midstream v. DOT*, 67 F.4th 1188 (D.C. Cir. 2023). In *GPA Midstream*, the D.C. Circuit vacated the requirements for gathering lines in an April 8, 2022 final rule, titled “Pipeline Safety: Requirement of Valve Installation and Minimum Rupture Detection Standards” (RMV Rule). Shortly after the D.C. Circuit’s decision, the Agency issued another final rule amending various provisions in Part 192 to provide explicit exceptions for gathering lines from the requirements in the RMV Rule. PHMSA proposes to reverse those amendments, in part, by removing the exception for gathering lines in the definitions of “Entirely replaced onshore transmission pipeline segments”, “Notification of potential rupture”, and “Rupture-mitigation valve” in Section 192.3. PHMSA also proposes to adopt certain amendments to § 192.9 to require operators of regulated gathering lines to develop emergency response plans in accordance with the current version of § 192.615. According to the NPRM, the Agency does not intend to extend the other requirements from the RMV Rule pertaining to rupture mitigation, valve installation, operation, and maintenance to gathering lines.

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## Design

- PHMSA proposes to amend § 192.195 requiring new, replaced, relocated, or otherwise changed district regulator stations that serve low-pressure gas distribution systems be equipped with at least two methods of overpressure protection. Operators would also be required to monitor the gas pressure at or near the location of overpressure protection devices with a system providing real-time notification capability in the event of an overpressurization event.

## Construction

- PHMSA proposes to amend § 192.305 requiring operators to inspect new, replaced, relocated, or otherwise changed transmission lines and mains to ensure they are constructed in accordance with Subpart G. Operator personnel that perform the construction task would be prohibited from performing the required inspection. There is, however, an exception for small operators in situations where the operator could only perform the inspection by using a third-party inspector.

## Testing

- PHMSA proposes to amend § 192.517 requiring gas pipeline operators to maintain test records of pipelines operating below 100 psig, service lines, and plastic pipelines for the life of the pipeline – well beyond the current 5 year requirement. The records would also need to include certain information about the operator and pipeline that was tested, similar to what is currently required in § 192.517 for other pipelines.

## Operations

- PHMSA proposes to amend § 192.605 requiring operators of gas distribution pipelines to update their O&M procedures to account for the risk of an overpressurization event. This includes identifying and responding to overpressurization indications, as well as investigating, responding to, and correcting the cause of an overpressurization indication. PHMSA also proposes to require that operators of gas distribution pipelines develop and follow a Management of Change (MOC) process when conducting certain activities. As part of the MOC process, operators would be required, among other things, to ensure that qualified personnel review and certify construction plans associated with installations, modifications, replacements, or upgrades for accuracy and completeness, before the work begins.
- For all gas pipeline operators, PHMSA proposes to expand the existing list of pipeline emergencies in § 192.615 for which operators must have an emergency response plan. Under the proposal, the list would include a notification of a potential rupture, a release of gas that results in one or more fatalities, and any incident deemed significant by the operator. For gas distribution lines, the list would also include the unintentional release of gas and shutdown of gas service to 50 or more customers (or 50 percent of its customers if it has fewer than 100 total customers). Operators would need to immediately notify the appropriate public safety answering point after receiving notice of any of the emergencies listed in § 192.615. PHMSA also proposes certain regulatory amendments requiring gas distribution operators to update their emergency response plans to improve communications with the public during an emergency.
- PHMSA proposes to establish a new § 192.638 requiring operators of gas distribution pipelines to identify and maintain traceable, verifiable, and complete maps and records that document the characteristics of their pipeline systems that are critical to ensuring pressure control. If an operator does not have these records, it would be required to develop and implement procedures for generating or collecting them.
- PHMSA proposes to establish a new § 192.640 requiring operators of gas distribution pipelines to evaluate each construction project to identify potential activities during which an overpressurization event could occur at a regulator station. If the evaluation results in a determination that a potential for overpressurization exists, operators would be

required to have qualified personnel at the regulator station to prevent or respond to an overpressurization event. The NPRM provides an exception for systems with remote monitoring and automatic shutdown capabilities.

## Maintenance

- PHMSA proposes to amend § 192.725 requiring operators to test in the same manner as a new service line each disconnected service line being returned to service. Records of these tests would need to be maintained for the life of the pipeline as proposed in § 192.517, discussed above.
- PHMSA proposes to amend § 192.741 requiring operators of gas distribution pipelines to monitor the outlet gas pressure at or near regulator stations in accordance with § 192.195, discussed above.

## Distribution Integrity Management Program (DIMP)

- PHMSA proposes to exempt small LPG operators from the DIMP requirements in Subpart P but extend annual reporting requirements to those operators, as proposed under Part 191 discussed above.
- PHMSA proposes to amend § 192.1007 establishing additional criteria for operators of gas distribution pipelines to evaluate when identifying and implementing measures to address risks identified in DIMP plans. Specifically, operators would need to account for, among other things, risks associated with the age of the pipe and pipeline system, the presence of known issues, and the potential for overpressurizing the system. Operators would also be required to implement measures to address those risks. In addition, operators would be required to document that each regulator station meets the design standards in § 192.195, discussed above, or take certain actions to minimize the risk of an overpressurization event.

## ***Proposed Amendments to Part 198 State Pipeline Safety Programs:***

- PHMSA proposes to amend §§ 198.3 and 198.13 requiring states to use the State Inspection Calculation Tool to ensure an adequate number of safety inspectors are employed in their pipeline safety programs.

Babst Calland has prepared a redline of Part 192 to show how PHMSA's proposed changes would affect existing regulations. Please contact a member of our pipeline safety practice if you would like a copy of the redline.



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*Led by four former U.S. Department of Transportation attorneys and officials, our Pipeline and Hazardous Materials Safety practice group counsels pipeline and midstream companies, gas utilities, terminal operators, investors, trade associations, and other stakeholders, throughout the United States. James Curry, Keith Coyle, Brianne Kurdock and Christopher Hoidal together have more than 70 years of combined experience with a multitude of energy and transportation safety matters. They partner with client engineering and legal personnel to address day-to-day compliance questions and develop business and regulatory strategies.*