



June 18, 2019

The Honorable Frank Pallone, Jr.
Chairman, Energy and Commerce Committee
U.S. House of Representatives
2107 Rayburn HOB
Washington, DC 20515

The Honorable Bobby L. Rush
Chairman, Subcommittee on Energy, Energy and Commerce Committee
U.S. House of Representatives
2188 Rayburn HOB
Washington, DC 20515

The Honorable Greg Walden
Ranking Member, Energy and Commerce Committee
U.S. House of Representatives
2185 Rayburn HOB
Washington, DC 20515

The Honorable Fred Upton
Ranking Member, Subcommittee on Energy, Energy and Commerce Committee
U.S. House of Representatives
2183 Rayburn HOB
Washington, DC 20515

Re: The Safer Pipelines Act of 2019

Dear Chairman Pallone, Chairman Rush, Ranking Member Walden, and Ranking Member Upton,

On June 19, 2019, the U.S. House Representatives, Energy and Commerce Committee, Subcommittee on Energy, will be holding a hearing to discuss draft legislation for reauthorizing the Pipeline Safety Act. The draft legislation, the Safer Pipelines Act of 2019 (2019 Act), would amend certain provisions in the Pipeline Safety Laws for gathering lines.¹ Specifically, Section 3 of the 2019 Act would amend the definitions of “transporting gas” and “transporting hazardous liquid” by eliminating certain limitations on the Pipeline and Hazardous Materials Safety

¹ Safer Pipelines Act of 2019, § 3 (discussion draft).

Administration’s (PHMSA or the Agency) authority to regulate rural gathering lines.² Section 3 would also define all gathering lines that operate at a pressure greater than 20 percent of specified minimum yield strength (SMYS) as regulated gathering lines for purposes of PHMSA’s pipeline safety standards.³

As the nation’s leading trade organization for the gathering industry, GPA Midstream Association (GPA Midstream)⁴ is strongly opposed to the proposed amendments in Section 3 of the 2019 Act. The amendments would alter longstanding procedural protections that limit PHMSA’s jurisdiction over rural gathering lines, override a multi-year effort by PHMSA and other interested stakeholders to establish new, risk-based regulations for rural gathering lines, and impose billions of dollars in unnecessary compliance costs on the gathering industry—costs that would be disproportionately born by small companies that operate some of the lowest risk pipelines in the United States. Accordingly, GPA Midstream is respectfully requesting that Section 3 be eliminated from the Safer Pipelines Act of 2019 in its entirety.

I. Background

In the Natural Gas Pipeline Safety Act of 1968 (1968 Act), Congress provided PHMSA with the authority to prescribe minimum federal safety standards for the transportation of gas by pipeline.⁵ The 1968 Act defined “transportation of gas” to include “the gathering, transmission, distribution of gas by pipeline or its storage in or affecting interstate or foreign commerce[.]” but specifically excluded “the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, a community development, or any similar populated area which the Secretary may define as a nonrural area[.]”⁶ The legislative history indicates that Congress excluded rural gas gathering lines from PHMSA’s jurisdiction in the 1968 Act because the “impressive” safety record of these lines did not support the need for federal regulation.⁷

Eleven years later, in the Hazardous Liquid Pipeline Safety Act of 1979 (1979 Act), Congress added a similar prohibition in providing PHMSA with the authority to prescribe

² *Id.*

³ *Id.*

⁴ 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/>. Prior to April 2016, GPA Midstream was known as the Gas Processors Association.

⁵ Pub. L. No. 90-481, 82 Stat. 720. PHMSA is the agency within the U.S. Department of Transportation (DOT) currently responsible for administering the Pipeline Safety Laws and Regulations. For ease of reference, PHMSA is used throughout this letter to refer to the various DOT agencies that have acted in that capacity since the passage of the 1968 Act.

⁶ *Id.* § 2(3), 82 Stat. at 720.

⁷ H.R. Rep. No. 90-1390 (1968), *reprinted in* 1968 U.S.C.C.A.N. 3223, 3234-35.

minimum safety standards for the transportation of hazardous liquids by pipeline.⁸ The 1979 Act defined “transportation of hazardous liquids” as “the movement of hazardous liquids by pipeline, or their storage incidental to such movement, in or affecting interstate or foreign commerce; except that it shall not include any such movement through gathering lines in rural locations[.]”⁹ As in the 1968 Act, the legislative history for the 1979 Act indicates that Congress excluded rural hazardous liquid gathering lines from PHMSA’s jurisdiction because the lines “present[ed] insufficient risk to life and property to require regulation.”¹⁰

Thirteen years later, in the Pipeline Safety Act of 1992 (1992 Act), Congress amended the jurisdictional limitations in the 1968 and 1979 Acts to provide PHMSA with the authority to regulate rural gathering lines, provided the Agency satisfied certain procedural requirements.¹¹ Specifically, the 1992 Act directed PHMSA to issue regulations defining the term “gathering line” and, in the case of gas gathering lines, to consider the “functional and operational characteristics” of these lines in establishing that definition.¹² The 1992 Act also directed PHMSA to issue regulations establishing minimum federal safety standards for a subset of so-called “regulated gathering line[s].”¹³ In deciding on “the types of the lines which are functionally gathering but which, due to specific physical characteristics, warrant regulation[.]” the 1992 Act instructed PHMSA to “consider such factors as location, length of line from the well site, operating pressure, throughput, and the composition of the transported gas” or hazardous liquid, as appropriate.¹⁴ The 1992 Act also prohibited PHMSA from regulating “crude oil gathering lines that are of a nominal diameter of 6 inches or less, are operated at low pressure, and are located in rural areas that are not unusually sensitive to environmental damage.”¹⁵

In 2006, PHMSA satisfied part of the 1992 Act’s rulemaking mandate by establishing new safety standards for gas gathering lines.¹⁶ Those safety standards, which remain in effect, require 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.¹⁷ If a pipeline meets the definition of an onshore gas gathering line, the safety standards require operators to determine if the line qualifies as a “regulated gathering line.” PHMSA recognizes two categories of regulated onshore gas gathering lines: (1) Type A gathering lines, which are higher stress pipelines that pass through more populated areas,¹⁸ and (2) Type B gathering lines,

⁸ Hazardous Liquid Pipeline Safety Act of 1979, Title II of Pub. L. No. 96-129, § 202(3), 93 Stat. 1003, 1003 (1979).

⁹ *Id.*

¹⁰ S. Rep. No. 96-182 (1979), *reprinted in* 1979 U.S.C.C.A.N. 1971, 1988.

¹¹ Pub. L. No. 102-508, 106 Stat. 3289.

¹² *Id.* § 109(a), 106 Stat. at 3295.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* § 208, 106 Stat. at 3304.

¹⁶ 49 C.F.R. §§ 192.8 to 192.9 (2018). A gathering line is generally defined in Part 192 as a “pipeline that transports gas from a current production facility to a transmission line or main.” *Id.* § 192.3.

¹⁷ *Id.* § 192.8(a).

¹⁸ *Id.* § 192.8(b) (table).

which are lower stress pipelines that pass through more populated areas.¹⁹ Different risk-based safety standards, drawn primarily from the requirements for gas transmission lines, apply to Type A and Type B gathering lines.²⁰

In 2008, PHMSA satisfied the remainder of the 1992 Act’s rulemaking mandate by establishing new safety standard for hazardous liquid gathering lines.²¹ Those safety standards, which also remain in effect, define “a regulated rural gathering line” as a petroleum gathering line in a rural area that satisfies a three-part test that is based on the pipeline’s outside diameter, proximity to unusually sensitive areas, and operating pressure.²² As with regulated gas gathering lines, operators of regulated rural petroleum gathering lines must comply with a series of risk-based safety standards.²³

PHMSA recently initiated two separate rulemaking proceedings to consider potential changes to the safety standards for gas and hazardous liquid gathering lines. In the first proceeding, initiated in 2010, PHMSA is recommending that operators comply with certain reporting requirements to determine if additional regulations are necessary for hazardous liquid gathering lines in rural areas.²⁴ PHMSA expects to issue a final rule in this proceeding in the coming months.²⁵

In the second proceeding, initiated in 2011, PHMSA is recommending 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.²⁶ PHMSA is also recommending that operators of unregulated rural gas gathering lines provide additional information to the Agency by complying with certain reporting requirements.²⁷ PHMSA expects to issue a final rule in this proceeding next year.²⁸

II. Analysis

Section 3 of the 2019 Act would amend the definitions of “transporting gas” and “transporting hazardous liquid” in the Pipeline Safety Laws by repealing provisions that limit PHMSA’s jurisdiction over rural gathering lines.²⁹ Specifically, Section 3 would strike the

¹⁹ *Id.*

²⁰ Compare *Id.* § 192.9(c) with *Id.* § 192.9(d).

²¹ Pipeline Safety: Protecting Unusually Sensitive Areas From Rural Onshore Hazardous Liquid Gathering Lines and Low-Stress Lines, 73 Fed. Reg. 31,634 (June 3, 2008).

²² *Id.* at 31,644-645.

²³ 49 C.F.R. § 195.11.

²⁴ Pipeline Safety: Safety of Hazardous Liquid Pipelines, 80 Fed. Reg. 61,610, 61,611-612 (Oct. 13, 2015).

²⁵ See Dep’t of Transp., Report on DOT Significant Rulemakings, <https://www.transportation.gov/regulations/report-on-significant-rulemakings> (last updated May 1, 2019) (providing that the final rule is anticipated to be published in June 2019). The final rule is currently under review by the Office of Management and Budget. Office of Mgmt. and Budget, List of Regulatory Actions Currently Under Review, <https://www.reginfo.gov/public/jsp/EO/eoDashboard.myjsp> (last visited June 17, 2019).

²⁶ Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. 20,722, 20,808 (Apr. 8, 2016).

²⁷ *Id.* at 20,806.

²⁸ See Dep’t of Transp., Report on DOT Significant Rulemakings, <https://www.transportation.gov/regulations/report-on-significant-rulemakings> (last updated May 1, 2019) (providing that the final rule is anticipated to be published in June 2020).

²⁹ Safer Pipelines Act of 2019, § 3 (discussion draft).

language that limits PHMSA's authority only to rural gathering lines that the Agency determines meet the statutory criteria necessary to warrant regulation in a rulemaking proceeding.³⁰ In other words, Section 3 completely removes the procedural protections that Congress has afforded to these low risk pipelines for more than two decades.

Section 3 of the 2019 Act would also amend the rulemaking provision from the 1992 Act by making all gathering lines that operate at a stress level greater than 20 percent of SMYS regulated gathering lines for purposes of PHMSA's regulations.³¹ That amendment, which does not consider a pipeline's diameter, proximity to populated or environmentally sensitive areas, or any other criteria, would have the effect of requiring operators of all higher stress, rural gas gathering lines to comply with PHMSA's safety standards and reporting requirements for Type A lines, and operators of all higher stress, rural hazardous liquid gathering lines to comply with PHMSA safety standards and reporting requirements for regulated rural petroleum gathering lines.

GPA Midstream is strongly opposed to Section 3 of the 2019 Act. The legislative and regulatory history demonstrates that the proposed amendments to the definitions and rulemaking requirements for gathering lines are not necessary. The proposed amendments would also undo nearly a decade's worth of work by the regulated community in examining whether to establish additional safety standards and reporting requirements for rural gathering lines. Finally, the proposed amendments would impose billions of dollars of unnecessary compliance costs on the gathering industry, and those costs would be disproportionately born by small companies that operate some of the lowest risk pipelines in the nation.

a. The legislative and regulatory history demonstrate that the amendments proposed in Section 3 of the 2019 Act are not necessary.

Congress has always considered rural gathering lines to present a very low risk to public safety. Indeed, at the time of the 1968 and 1979 Acts, Congress found that the risk was so low that PHMSA should not have the authority to regulate rural gathering lines.³² Congress did not overrule these earlier findings in the 1992 Act.³³ Rather, Congress asked PHMSA to determine if rural gathering lines presented enough risk to warrant federal regulation.³⁴

The Agency satisfied the rulemaking mandates in the 1992 Act several years ago and is in the process of revisiting the safety standards and reporting requirements for rural gathering lines to account for recent developments in the oil and gas industry, particularly the expansion of pipeline infrastructure in the nation's shale plays. PHMSA expects to complete that process and issue new rules in the very near future.³⁵ Far from demonstrating that Section 3 of the 2019 Act

³⁰ *Id.*

³¹ *Id.*

³² H.R. Rep. No. 90-1390 (1968), *reprinted in* 1968 U.S.C.C.A.N. 3223, 3234-35; S. Rep. No. 96-182 (1979), *reprinted in* 1979 U.S.C.C.A.N. 1971, 1988.

³³ Pipeline Safety Act of 1992 § 109, 106 Stat. at 3294-95.

³⁴ *Id.*

³⁵ See Dep't of Trans., Report on DOT Significant Rulemakings, <https://www.transportation.gov/regulations/report-on-significant-rulemakings> (last updated May 1, 2019) (providing that the final rule for liquid gathering lines is anticipated to be published in June 2019 and gas gathering lines is anticipated to be published in June 2020).

is needed, the facts show that the current statutory provisions are continuing to serve important public policy objectives, and that the Agency is discharging its obligation in a manner consistent with the intent of Congress.

- b. Section 3 of the 2019 Act would undo nearly a decade's worth of work by the regulated community to establish new reporting requirements and safety standards for rural gathering lines.*

PHMSA, the pipeline industry, and other interested stakeholders have been examining the need to establish new safety standards and reporting requirements for rural gathering lines for nearly a decade. After considering the information submitted in response to a 2010 request for public comment, in 2015, the Agency proposed to extend the reporting requirements for hazardous liquid pipelines to rural gathering lines.³⁶ The Liquid Pipeline Advisory Committee, the federal advisory committee responsible for reviewing proposed changes to the hazardous liquid pipeline safety regulations, voted in favor of that proposal in 2016.³⁷ PHMSA has indicated that it expects to issue a final rule in that proceeding later this year.³⁸

Similarly, after considering the information submitted in response to a 2011 request for public comment, the Agency proposed new safety standards and reporting requirements for rural gas gathering lines in 2016.³⁹ The Gas Pipeline Advisory Committee, the federal advisory committee that reviews proposed changes to the gas pipeline safety regulations, is scheduled to consider that proposal later this month.⁴⁰ PHMSA expects to issue a final rule in that proceeding next year.⁴¹

Like hundreds of other interested stakeholders, GPA Midstream has been actively engaged in both proceedings and hopes that the Agency finishes the rulemaking process as soon as possible. Section 3 of the 2019 Act would override this multi-year rulemaking effort and unnecessarily treat rural gathering lines the same as other pipelines that present a much greater risk to public safety.

- c. Section 3 of the 2019 Act would impose billions of dollars in unnecessary compliance costs on the gathering industry, and those costs would be disproportionately born by small operators.*

³⁶ Pipeline Safety: Safety of Hazardous Liquid Pipelines, 80 Fed. Reg. at 61,611-612.

³⁷ Transcript, PHMSA Liquid Pipeline Advisory Committee 107:4 – 113:1 (Feb. 1, 2016).

³⁸ See Dep't of Trans., Report on DOT Significant Rulemakings, <https://www.transportation.gov/regulations/report-on-significant-rulemakings> (last updated May 1, 2019) (providing that the final rule is anticipated to be published in June 2019). The final rule is currently under review by the Office of Management and Budget. Office of Mgmt. and Budget, List of Regulatory Actions Currently Under Review, <https://www.reginfo.gov/public/jsp/EO/eoDashboard.myjsp> (last visited June 17, 2019).

³⁹ Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. 20,722 (Apr. 8, 2016).

⁴⁰ PHMSA Public Meetings and Documents, Gas Pipeline Advisory Committee, <https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=143> (last visited June 17, 2019) (The meeting is scheduled for June 25 and 26, 2019, at the Department of Transportation Headquarters in Washington D.C.).

⁴¹ See Dep't of Trans., Report on DOT Significant Rulemakings, <https://www.transportation.gov/regulations/report-on-significant-rulemakings> (last updated May 1, 2019) (providing that the final rule is anticipated to be published in June 2020).

In 2016, PHMSA proposed to apply certain safety standards to a subset of the rural gas gathering lines covered under Section 3 of the 2019 Act, *i.e.*, gas gathering lines in Class 1 locations 8 inches or greater in diameter with a maximum allowable operating pressure that produces a hoop stress of 20 percent or more of SMYS for metallic lines or more than 125 PSIG for non-metallic lines.⁴² PHMSA also proposed to extend the reporting to all rural gathering lines, whether regulated or not.⁴³

Given the significance of the proposed changes, API asked a third-party to prepare a cost-benefit analysis. That analysis found that the Agency's proposed rule would impose nearly \$30 billion in costs on the gas gathering industry during the initial 15-year compliance period, and that those costs would be disproportionately born by small operators, consuming approximately 90 percent of the annual revenue generated by these companies.⁴⁴

Although PHMSA is no longer recommending that the proposed safety standards apply to rural gas gathering lines 12 inches or less in diameter and wants to limit the reporting requirements for unregulated rural gas gathering lines,⁴⁵ Section 3 of the 2019 Act does not draw these distinctions. All rural gas gathering lines that operate at a pressure greater than 20 percent of SMYS would be regulated, presumably in accordance with the requirements for higher stress, Type A gathering lines, and the regulations would apply without regard to diameter or any other risk factor. The potential cost of complying with these regulations would be enormous for the gas gathering industry and far exceed API's initial \$30 billion estimate, which did not even consider the economic impact of regulating rural gas gathering lines less than 8 inches in diameter.⁴⁶

The potential costs that Section 3 of the 2019 Act would impose on hazardous liquid pipeline operators cannot be estimated with any reasonable degree of certainty at this time. PHMSA only recently proposed to collect additional data to determine if the safety standards for rural gathering lines need to be changed.⁴⁷ Until that data is collected and analyzed, a reasonable estimate of the costs associated with treating all high stress hazardous liquid gathering lines in rural areas as regulated cannot be provided.

⁴² Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. at 20,808.

⁴³ *Id.* at 20,806.

⁴⁴ ICF International, Cost and Benefit Impact Analysis of the PHMSA Natural Gas Gathering and Transmission Safety Regulation Proposal at 3, 69 (July 1, 2016), <https://www.regulations.gov/document?D=PHMSA-2011-0023-0381>.

⁴⁵ PHMSA, Power Point Presentation: Safety of Gas Gathering Presentations, 6 (Jan. 21, 2019), <https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=143>.

⁴⁶ According to PHMSA's latest estimate, there are 97,342 miles of high-stress rural gas gathering lines that are 8 inches or greater in diameter, all of which would become regulated under Section 3 of the 2019 Act. *Id.* at 14. Although there is no PHMSA estimate available at this time, thousands of additional miles of high-stress rural gathering lines that are less than 8 inches in diameter would also become regulated.

⁴⁷ Pipeline Safety: Safety of Hazardous Liquid Pipelines, 80 Fed. Reg. at 61,611-612.

III. Conclusion

For the reasons provided in this letter, GPA Midstream is strongly opposed to Section 3 of the 2019 Act. If you have questions, please contact me at (202) 279-1664 or by email at mhite@GPAglobal.org.

Sincerely,

A handwritten signature in black ink that reads "Matthew Hite". The signature is written in a cursive, flowing style.

Matthew Hite
Vice President of Government Affairs
GPA Midstream Association