Chapter 5

Pipeline Safety: An Overview of the Legal Framework, the Regulation of Gas Gathering, and How Current and Future Regulation May Affect Producers

Michael Diamond
Jim Curry
Van Ness Feldman, LLP
Washington, DC

Synopsis

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§ 5.01. Introduction.

The U.S. Department of Transportation’s (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA), in partnership with the states, administers a national pipeline safety regulatory program for gas and hazardous liquid pipelines. This chapter reviews the basic legal framework for pipeline safety, discusses the current regulations for gas gathering pipelines, potential changes to these regulations, and analyzes how existing and potential gathering regulations may impact upstream producers.

§ 5.02. Pipeline Safety Legal Framework.


The Pipeline Safety Act (PSA) provides the DOT with the authority to develop and implement a national pipeline safety regulatory program for gas and hazardous liquid pipelines.\(^1\) The purpose of the PSA is to “provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities by improving the regulatory and enforcement authority of the Secretary of Transportation.”\(^2\) The Secretary of Transportation has delegated all of his authority under the PSA to the Administrator of the Pipeline and Hazardous Materials Safety Administration.\(^3\) PHMSA has developed safety standards that apply to the owners and operators of gas and hazardous liquid pipelines, and certain


\(^{3}\) See 49 C.F.R. § 1.97 (2012). For ease of reference, this chapter refers to PHMSA and all of its predecessor agencies, including the Research and Special Programs Administration.
liquefied natural gas (LNG) facilities, and monitors and enforces compliance with these requirements through an inspection program. PHMSA regulates all interstate pipelines and those intrastate lines that are not regulated by the states. All states except Alaska and Hawaii regulate intrastate gas pipelines, including certain gas gathering lines, pursuant to a delegation of federal authority. Seventeen states currently regulate intrastate hazardous liquid pipelines, also pursuant to a delegation of federal authority, with PHMSA regulating intrastate liquid lines in the remaining states.

The Pipeline Safety Act provides PHMSA with jurisdiction over pipeline facilities and the transportation of gas and hazardous liquids by pipeline in or affecting interstate commerce. Courts have found that jurisdiction under the PSA applies to both intrastate and interstate pipelines to the full extent permitted under the Commerce Clause.

The PSA defines a “pipeline facility” to include gas pipeline facilities and hazardous liquid pipeline facilities. A “gas pipeline facility” includes “a pipeline, a right of way, a facility, a building, or equipment used in transporting gas or treating gas during its transportation.” The transportation of gas includes transmission, distribution and some gathering,
and the storage of gas.\textsuperscript{12} There is an exemption in the PSA for certain gas
gathering lines; however, amendments to the PSA have significantly limited
the scope of that exemption.\textsuperscript{13} The PSA does not reference gas production,
but PHMSA regulations currently exempt gas production facilities and certain
gas gathering pipelines located in rural areas.\textsuperscript{14} The PSA defines “gas” to
include “natural gas, flammable gas, or toxic or corrosive gas.”\textsuperscript{15}

A “hazardous liquid pipeline facility” includes “a pipeline, a right of way,
a facility, a building, or equipment used or intended to be used in transporting
hazardous liquid.”\textsuperscript{16} The transportation of hazardous liquid includes the
“movement of hazardous liquid by pipeline,” incidental storage, and some
gathering.\textsuperscript{17} Notably, the PSA hazardous liquid jurisdictional provisions are
broad and do not employ the transmission or distribution concepts present in
the gas provisions. The PSA includes explicit jurisdictional exemptions for the
movement of hazardous liquid through rural gathering, “onshore production,
refining, or manufacturing facilities” and associated storage and in-plant
piping.\textsuperscript{18} PHMSA regulations include additional exemptions beyond those
in the PSA, and currently exempt certain rural hazardous liquid gathering
pipelines, gravity fed lines, terminal facilities, and certain other pipelines.\textsuperscript{19}
The PSA defines a “hazardous liquid” to include petroleum or petroleum
products, and nonpetroleum fuels, including biofuels that are “flammable,
toxic, or corrosive or would be harmful to the environment if released
insignificant quantities.”\textsuperscript{20} PHMSA may also designate other substances as

\textsuperscript{12} Id. § 60101(a)(21).
\textsuperscript{13} Id. §§ 60101(a)(21)(B) & 60101(b).
\textsuperscript{14} See 49 C.F.R. §§ 192.3, 192.8. See also § 5.03[3], infra.
\textsuperscript{15} 49 U.S.C. § 60101(a)(2).
\textsuperscript{16} Id. § 60101(a)(5).
\textsuperscript{17} Id. § 60101(a)(22)(A).
\textsuperscript{18} Id. §§ 60101(a)(22)(B). As with the PSA rural gas gathering exemption, the rural liquids
gathering exemption has been significantly limited by amendments to the PSA. See id. §
60101(b).
\textsuperscript{19} 49 C.F.R. § 195.1(b).
\textsuperscript{20} 49 U.S.C. § 60101(a)(4). PHMSA regulations further define hazardous liquid to include
(1) petroleum, including crude oil, condensate, natural gasoline, natural gas liquids, and
liquefied petroleum gas; (2) petroleum products, including flammable, toxic, or corrosive
products obtained from distilling and processing of crude oil, unfinished oils, natural gas

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hazardous liquids on a finding that they “may pose an unreasonable risk to life or property.”


The PSA requires PHMSA to set minimum safety standards for pipeline transportation and pipeline facilities. PHMSA standards apply to “any or all of the owners or operators” of a pipeline facility, and cover a broad range of subjects, including the qualification of pipeline workers and the “design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities.” PHMSA has broad authority to make rules within these general categories, and may promulgate any standard that is practicable, reasonable, based on relevant safety and environmental information, appropriate for the particular pipeline facility, based on a cost benefit analysis, and considers public comments and the comments of PHMSA’s Technical Advisory Committees.

The PSA provides PHMSA with substantial discretion in rulemaking, but from time to time Congress has required PHMSA to issue regulations to address specific safety issues. For example, the recent 2011 Act requires PHMSA to undertake a study and consider regulations that would require the use of automatic or remote-controlled shut-off valves on new transmission pipeline facilities. Other specific directives have required, for example, that PHMSA make rules requiring that new pipelines be capable of accommodating “smart pigs,” which are instrumented pipeline inspection devices that travel through pipelines; prohibited most exceptions for low-stress liquids, blend stocks and other miscellaneous hydrocarbon compounds; and (3) anhydrous ammonia. 49 C.F.R. § 195.2.

22 See generally id. § 60102.
23 Id. §§ 60102(a)(2)(A), 60102(a)(2)(B). There are exceptions to the cost benefit requirements for certain types of rules, including those in which the agency adopts industry standards and no significant adverse comments are received. Id. § 60102(b)(6).
24 Id. § 60102(b).
hazardous liquid lines; and required PHMSA to make rules for the direct inspection of pipeline facilities.\textsuperscript{26}


PHMSA has significant authority under the PSA to direct compliance, assess administrative civil penalties, enter and inspect facilities, investigate accidents, issue subpoenas, and require the abatement of hazardous conditions and integrity issues on pipelines.\textsuperscript{27} PHMSA may also refer civil and criminal claims under the PSA to the Attorney General for enforcement.\textsuperscript{28}

Under the PSA, pipeline owners and operators must comply with all applicable pipeline safety laws, regulations and orders, and PHMSA may issue administrative orders requiring such compliance.\textsuperscript{29} Pipeline owners and operators are subject to administrative civil penalties of up to $200,000 per violation per day up to $2 million for a related series of violations.\textsuperscript{30} PHMSA interprets “related series” narrowly and has issued final orders finding multiple violations concerning the same incident or issue to be unrelated for purposes of the application of the administrative penalty caps.\textsuperscript{31} PHMSA may also request the Attorney General to initiate a civil action in federal district court to enforce the pipeline safety laws.\textsuperscript{32} Judicial remedies include injunctions, punitive damages, and civil penalties.\textsuperscript{33} In the 2011 Act, Congress made clear that the administrative penalty caps do not apply in judicial cases, making the penalties in these cases potentially severe.\textsuperscript{34}

\textsuperscript{26} 49 U.S.C. §§ 60102(f), 60102(k), & 60102(m).
\textsuperscript{27} \textit{See} 49 U.S.C. §§ 60117 & 60118.
\textsuperscript{28} \textit{Id}. § 60120(a)(1).
\textsuperscript{29} \textit{Id}. §§ 60118(a)(1), 60118(b), & 60122(a).
\textsuperscript{30} \textit{Id}. § 60122(a)(1).
\textsuperscript{32} 49 U.S.C. § 60120(a)(1).
\textsuperscript{33} \textit{Id}.
The PSA provides for criminal fines under Title 18 of the U.S. Code, and a general maximum imprisonment of up to five years for knowing and willful violations of the PSA, pipeline safety regulations, or orders. Persons who “knowingly and willfully” damage or destroy interstate pipeline facilities, or attempt or conspire to do so, may be imprisoned for up to twenty years, and imprisoned for life if death to a person results from damage to the pipeline facilities.

PHMSA may issue corrective action orders requiring facility operators to take necessary action if PHMSA determines that a pipeline facility “is or would be hazardous to life, property, or the environment.” The corrective actions that PHMSA may order an operator to undertake include “suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other appropriate action.” This may be PHMSA’s most powerful authority, as it enables the agency to shut down a pipeline until corrective action is completed. For less immediate threats, if PHMSA determines that a pipeline facility has a condition that poses a pipeline integrity risk to public safety, property, or the environment, PHMSA may issue safety orders requiring the operator to take corrective actions to remedy the condition.

PHMSA has broad investigatory authority to carry out its duties. PHMSA may conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of records, and take depositions. Operators must provide PHMSA with assistance and make relevant information available for investigations of pipeline accidents or incidents, and may be penalized for obstructing an investigation or inspection.

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36 Id. § 60123(b). See, e.g., United States v. Long, 173 F.3d 853 (4th Cir. 1999) (unpublished decision) (upholding conviction for attempted damage or destruction of an interstate pipeline facility).
37 49 U.S.C. § 60112(a). Through corrective action orders PHMSA also may direct the operator to relieve employees of duties if necessary. Id. § 60112(d).
38 Id. § 60112(d)(1).
39 Id. § 60117(l)(1).
40 Id. § 60117(a).
41 Id. §§ 60118(b), 60118(c), 60118(e).


The Natural Gas Pipeline Safety Act of 1968 (NGPSA) gave the DOT the authority to regulate pipeline transportation of natural gas, and the transportation and storage of LNG. The NGPSA was enacted to respond to the significant increase in mileage of all types of natural gas pipelines after World War II and to give the DOT comprehensive authority to issue federal safety regulations for significant modes of transportation. The NGPSA required the DOT to promulgate and enforce safety standards, and included a state certification program to allow states to regulate intrastate pipelines for safety.

Prior to 1968, most states regulated gas pipeline safety in accordance with industry standards. Of the states with some form of safety regulation in place, many had applied the American Standards Association (now the American Society of Mechanical Engineers (ASME)) B.31-8 engineering code to gas pipelines.


Early DOT regulations for hazardous liquid pipelines were promulgated in 1968 under the Explosives Transportation Act of 1908 ("TOEA"). The TOEA was a criminal statute enacted in 1908, designed to ensure the safety

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46 1968 U.S.C.C.A.N. 3223 at 3228. ASME B.31-8 has been updated many times since 1968, and remains the most important industry standard for the design, operation, maintenance and repair of gas distribution and transmission pipelines. Early PHMSA gas pipeline safety regulations were based on provisions of B.31-8 and portions of today’s B.31-8 standards are incorporated in PHMSA’s 49 C.F.R. Part 192 regulations. See 49 C.F.R. § 192.7.
47 See Explosives Transportation Act of 1908, Ch. 234, 35 Stat. 554 (May 30, 1908); see also Carriers by Pipeline, 32 Fed. Reg. 16,040 (Nov. 22, 1967).
of the transportation of dynamite.\textsuperscript{48} The TOEA was not written with pipeline safety in mind; in fact, it did not even mention pipelines.\textsuperscript{49} 

In 1979, noting the inadequacy of the TOEA as a source of authority for hazardous liquid pipeline safety standards, Congress passed the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA), adding specific hazardous liquid pipeline safety jurisdiction to the DOT’s mandate.\textsuperscript{50} The HLPSA set up a statutory framework that paralleled the NGPSA, with minimum federal safety standards for pipeline transportation of hazardous liquid, administered by PHMSA and certified state programs.\textsuperscript{51}

[c] — Pipeline Safety Legislation After the NGPSA and HLPSA.

The NGPSA and HLPSA were amended numerous times, and were eventually merged into a single authority in the 1994 recodification of the transportation provisions at Title 49 of the U.S. Code.\textsuperscript{52} Congress has since amended the PSA several times, oftentimes adjusting the substantive law concurrently with a review and reauthorization of the appropriations for PHMSA’s programs.\textsuperscript{53} Most recently, Congress passed the 2011 Act,\textsuperscript{54} which, among many other provisions, doubles PHMSA’s administrative civil penalty authority for violations of pipeline safety laws, and requires pipeline owners and operators to verify the maximum allowable operating pressures (MAOP) of certain gas transmission pipelines.\textsuperscript{55}

\textsuperscript{49} See id.
\textsuperscript{51} See generally id.
\textsuperscript{52} Pub. L. 103-272 (1994).
\textsuperscript{55} Id. §§ 2, 23, 125 Stat. at 1918-19 (codified as amended at 49 U.S.C. §§ 60122 (civil penalties), 60139 (MAOP)).
As discussed more fully below, the 2011 Act also requires PHMSA to study the sufficiency of state and federal laws and regulations over offshore and onshore gas and hazardous liquid gathering lines. As part of the gathering study requirement, PHMSA must evaluate the costs and benefits of broader gathering pipeline safety regulation and consider whether it would be appropriate to eliminate current regulatory exemptions for certain gathering lines.


[a] — State Certification Program.

While PHMSA has statutory jurisdiction over both interstate and intrastate pipeline facilities and transportation, PHMSA’s state certification program allows states to regulate, inspect, and enforce pipeline safety requirements for intrastate pipeline facilities. All states except Alaska and Hawaii participate in the certification program for intrastate gas facilities, and seventeen states participate in the hazardous liquids program. The certification program requires states to adopt and enforce federal pipeline safety standards, and permits them to adopt more stringent state standards, if they are not inconsistent with federal standards. States may not adopt safety standards for interstate pipeline facilities or interstate pipeline transportation, with the exception of one-call notification programs.

Under state certification programs, most states have adopted the PHMSA regulations and some additional safety regulations that are more stringent

56 Id. § 21, 125 Stat. at 1917.
57 Id.
60 See 49 U.S.C. §§ 60104(c), 60105(b).
61 Id. § 60104(c). State one-call notification programs provide a means for excavators to notify pipelines of planned excavation activities in order to allow operators to locate and mark their facilities to prevent damage. Id. § 60114.
than PHMSA Regulations, often to address unique state distribution pipeline issues.62 While the PSA requires that states enforce pipeline safety standards using injunctive relief and penalties similar to the federal PSA requirements,63 each state has unique enforcement and compliance procedures that are often prescribed by state public utility laws and regulations. As a result, there is significant variability in how states administer and enforce state pipeline safety requirements.

Every year, each state participating in PHMSA’s state certification program must submit to PHMSA a certification indicating that it complies with the PSA and PHMSA’s requirements for state programs.64 PHMSA conducts a broad evaluation of each state program, considering, among other things, procedures for conducting inspections and incident investigations, damage-prevention program adequacy, procedures, and other compliance activities.65 PHMSA may reject a state’s certification if it determines that the state is not satisfactorily enforcing the federal safety standards.66

[b] — Interstate Agents.

Although states are explicitly preempted from enforcing safety standards against interstate pipelines, they may agree to participate in the oversight of interstate pipelines as PHMSA’s agents.67 Currently, nine states act as PHMSA’s interstate agents for gas safety, and six do so for hazardous liquids.68 State agents may participate in investigations involving incidents

64 Id. § 60105(a).
67 See id. § 60106.
68 The nine states that act as interstate agents for gas pipelines are Arizona, Connecticut, Iowa, Michigan, Minnesota, New York, Ohio, Washington, and West Virginia. Six states —
or new construction, and may take on additional oversight, inspection, and investigatory duties.\footnote{49 U.S.C. § 60106(b).} State agents must notify PHMSA of any violations or probable violations discovered as a result of actions taken under the agreements, and PHMSA may then undertake enforcement as appropriate.\footnote{Id. § 60106(c).}

\section*{[c] — Federal Grants for State Programs.}

The PSA authorizes PHMSA to provide states with grants to fund up to 80\% of the costs associated with state pipeline safety programs.\footnote{Id. § 60107(a).} PHMSA may also provide grants for state programs intended to prevent damage to pipeline facilities.\footnote{Id. § 60134.} PHMSA grants are based on performance standards, and the amount of grant funding depends on the adequacy of a state’s certification and interstate agent programs.\footnote{See id. § 60107(b). PHMSA reallocates grant funding annually. Its considerations in allocating funds include, but are not limited to, the state’s operating practices; the quality and quantity of the state’s inspection, investigation, and enforcement/compliance actions; recordkeeping; and the extent of the state’s regulatory jurisdiction. 49 C.F.R. § 198.13(c).}

\section*{[d] — Increased Scrutiny of State Programs.}

As a result of recent, significant pipeline incidents and accidents in San Bruno, California, Allentown, Pennsylvania and elsewhere, state safety programs and PHMSA’s oversight of these programs have been the focus of scrutiny by Congress and the public. PHMSA also has come under the scrutiny of the National Transportation Safety Board (NTSB) and the DOT Office of Inspector General (OIG) for its oversight of state compliance and enforcement programs.\footnote{In the aftermath of the September 2010 Pacific Gas and Electric Company pipeline rupture in San Bruno, California that resulted in eight fatalities and millions of dollars in property damage, the NTSB issued a series of recommendations on the state/federal partnership to PHMSA and the California Public Utilities Commission, the state safety regulator. See NTSB, Pipeline Accident Report No. NTSB/PAR-11/01 PB2011-916501, http://primis.phmsa.dot.gov/comm/Partnership.htm (last visited June 14, 2013) (follow link under the heading “State Pipeline Safety Programs”).} In response to apparent PHMSA pressure, a number

of states have recently increased their civil penalty authorities, in many cases bringing them in line with the federal administrative civil penalty caps of $200,000 per violation per day, and up to $2 million for a related series of violations.\footnote{For example, West Virginia (H.B. 2505), Texas (S.B. 900), and Iowa (Senate File 91) increased their pipeline safety penalty caps in 2013.} There are also indications that the states are under greater pressure from PHMSA to take more enforcement actions and increase the extent to which civil penalties are used.\footnote{See, e.g., American Public Gas Ass’n, \textit{URGENT: We Need Your Help to Head Off Mandatory Fines for Pipeline Safety Violations}, http://www.apga.org/i4a/headlines/headlinedetails.cfm?id=1647&pageid=1&archive=0 (last visited June 14, 2013) (“PHMSA, however, is pressuring states to impose a fine with each and every notice of violation and threatening to cut federal funding to states that do not impose fines.”).} Increased state oversight may bring more scrutiny to operators of gathering pipelines, particularly in areas with significant mid-stream build-out activity, such as the Marcellus and Utica shale.

\subsection*{\S 5.03. Regulation of Gas Gathering.}

\subsubsection*{[1] — Overview of Gas Gathering Regulation.}

The PSA provides jurisdiction over gas gathering facilities — generally, the pipelines which transport gas from production facilities to transmission lines.\footnote{See 49 U.S.C. § 60101(a)(21). Though this chapter is focused on gas gathering, certain hazardous liquid gathering is also subject to PSA jurisdiction. In general, the PSA and PHMSA regulations on liquids gathering set out a framework and have a history which is analytically distinct from gas. \textit{Id.} §§ 60101(a)(22), 60101(b); 49 C.F.R. §§ 195.1, 195.2, 195.11.} Under the PSA a gas pipeline is an interstate pipeline if it is subject to the Federal Energy Regulatory Commission’s (FERC) jurisdiction under the Natural Gas Act (NGA).\footnote{49 U.S.C. § 60101(a)(6); \textit{see generally} Natural Gas Act, 15 U.S.C. §§ 717, \textit{et seq.}} Therefore, because most gas gathering pipelines are not subject to FERC’s NGA jurisdiction, these facilities are usually intrastate...
pipelines under the PSA, subject to state pipeline safety regulation.\textsuperscript{79} Gas gathering pipelines are often the first step in the transportation of gas after it is extracted from the ground. When gathering pipelines face compliance issues or new or changed regulation, this may increase costs and could, in some cases, impact their ability to bring gas to market.

PHMSA’s regulation of gas gathering has changed over time, but has generally followed a risk-based approach. In its last gas gathering rule in 2006, PHMSA set out a detailed framework for determining whether an onshore gas gathering line is regulated, and, if so, where gathering starts and ends.\textsuperscript{80} In its 2006 rule, PHMSA also determined that the relatively low risk posed by most rural, Class 1 gathering pipelines warranted continuing to exempt rural gas gathering facilities from its regulations.\textsuperscript{81} Most gas gathering lines in the United States are located in rural areas.\textsuperscript{82} In 2012, the U.S. General Accounting Office (GAO) reported that PHMSA only regulates about 20,000 miles of over 200,000 estimated miles of gas gathering pipelines in the United States.\textsuperscript{83}

In light of substantial gathering pipeline construction activity to support increased domestic shale gas production, PHMSA is considering whether to change the framework for onshore gas gathering pipelines. Specifically, in a 2011 Advanced Notice of Proposed Rulemaking (2011 ANPRM), PHMSA indicated that it is considering regulating certain presently exempt rural gas gathering lines, changing the framework for determining where regulated

\textsuperscript{79} There may be exceptions to this general rule for certain legacy gathering pipelines that were constructed pursuant to NGA Section 7 certificates of public convenience and necessity granted by FERC or its predecessor, the Federal Power Commission. See 15 U.S.C. § 717f.


\textsuperscript{81} 49 C.F.R. §§ 192.3, 192.8. PHMSA decided not to regulate gas gathering lines in “Class 1” areas, defined as areas that extend 220 yards on either side of any continuous one-mile length of pipeline and contain 10 or fewer buildings intended for human occupancy. Id. § 192.5. See Gas Gathering Line Definition; Alternative Definition for Onshore Lines and New Safety Standards, 71 Fed. Reg. 13,289, 13,297 (2006).


\textsuperscript{83} Id.
gathering starts and ends, and adding additional substantive regulations for gathering.\(^{84}\)

\[2\] — History of Gas Gathering Regulation.

[a] — Early Challenges Defining Gathering.

After the passage of the NGPSA in 1968, PHMSA struggled to define clearly the points at which gathering begins and ends, which led to difficulty distinguishing gathering lines from other facilities.\(^{85}\) Determining the type of pipeline and where it begins and ends is important because the facility type may determine whether and to what extent a pipeline is regulated. The initial gas safety regulations promulgated under the NGPSA defined the term “gathering line” as “a pipeline that transports gas from a current production facility to a transmission line or main,” and that basic definition remains in place today.\(^{86}\) However, the term “production facility” was undefined and its limits were not generally recognized.\(^{87}\) The point at which unregulated production facilities ended and regulated gathering facilities began was thus unclear. Likewise, it was unclear where gathering lines ended, leading to difficulties distinguishing gathering from transmission or distribution.

In an attempt to clarify the framework for classifying gathering, and by extension other pipeline facilities, PHMSA proposed an amended definition of “gathering line” in 1974 based on the actual function or service the line performed.\(^{88}\) Under this proposal, “gathering line” was to be defined as “a pipeline that transports gas from the point where gas is produced to the end of any treatment or other processing necessary to make the gas generally fit


\(^{87}\) Definition of Gathering Line, 39 Fed. Reg. 34,569, 34,569 (Sept. 26, 1974).

\(^{88}\) Id. at 34,570.
Several commenters found PHMSA’s proposed definition unclear, and it was withdrawn from consideration.\(^90\)

In 1986, the National Association of Pipeline Safety Representatives (NAPSR), a group that represents state government pipeline inspectors, surveyed its members about the extent of the problem with interpreting the definition of “gathering line.”\(^91\) Numerous state regulators reported disagreements with operators over whether certain rural pipelines should be classified as transmission or gathering.\(^92\) In response to NAPSR’s concerns, PHMSA again attempted to clarify the definition of gathering in a 1991 proposed rule, in which it proposed to identify the endpoint of a gathering line, with some exceptions, “at the last point downstream from a production facility where the produced gas is commingled with gas produced in the same production field or two adjacent production fields,” in the absence of a downstream processing plant or point of custody transfer.\(^93\) PHMSA proposed to define “production field” as “an area underlaid by at least one reservoir containing natural gas or natural gas associated with crude oil.”\(^94\) PHMSA based its proposed gathering definition on FERC’s “central-point-in-the-field” test, under which gathering for a particular production field ends for consumers.”\(^89\)

\(^89\) Id.

\(^90\) See Definition of Gathering Line, 43 Fed. Reg. 42,773 (Sept. 21, 1978). As examples of this proposed definition’s lack of clarity, it was noted that gas removed by processing might be “generally fit for consumers” in some cases but not others, and that the word “treatment” could be construed to include odorization or addition of propane to natural gas. Gas Gathering Line Definition, 56 Fed. Reg. 48,505, 48,506 (Sept. 25, 1991).


\(^92\) Id.

\(^93\) Id. at 48,508. PHMSA included three exceptions to this definition: First, once produced gas reached the appropriate gathering end point, a pipeline transporting the gas beyond that end point would be either a transmission line or distribution line. Second, a pipeline that transported gas from the outlet of a production facility would not be a gathering line if downstream from that production facility, there was no processing plant, no custody transfer of gas, and no commingling with gas produced in the same field or two adjacent fields. Third, any pipeline facility subject to FERC jurisdiction would not be considered a gathering line. Id. at 48,508-09.

\(^94\) Id. at 48,508.
at the central point at which separate lateral lines in that field bring gas for
delivery to a single line.95

Industry commenters disputed the significance of the definitional
problems with gathering and argued that PHMSA’s proposed changes would
result in wholesale reclassification of some pipelines.96 PHMSA delayed
further action pending the collection and analysis of additional information.97


In the NGPSA of 1968, Congress expressly prohibited the regulation of
gathering pipelines located in rural areas, on the basis of the good safety
record of gathering lines at the time.98 In 1992, Congress made two key
changes to the gathering provision of the PSA.99

First, the 1992 amendments directed PHMSA to define the term “gathering
line,” considering certain functional and operational characteristics.100
Congress also directed PHMSA to regulate a class of gathering lines
called “regulated gathering lines,” which were to be defined based on their
“location, length of line from well site, operating pressure, throughput,” and
gas composition.101 Congress specified that PHMSA was not bound by the
FERC’s classification of gathering under the NGA.102 These amendments
provided the agency with guidance on how to address long-standing
definitional issues for gathering.

Second, Congress opened the door to the regulation of rural gas gathering
pipelines. In a tortuous amendment to the PSA’s rural gathering exemption,
Congress left the text of the exemption in place and added an exception to

95 Id. (citing Barnes Transp., Inc., 18 F.P.C. 369 (1957)).
(Nov. 5, 2003).
97 Id. at 62,557.
as amended at 49 U.S.C. § 60101(b)(1)(B)(i)).
100 Id., § 60101(b)(1)(B)(ii).
101 Id.
the exemption for “gathering through regulated gathering lines.”103 This arguably allows the DOT to regulate, if justified under the statutory factors for regulated gathering, a class of gathering lines that includes rural gathering lines.104

The House Committee on Energy and Commerce noted that the DOT had been attempting to define gathering lines for years, and that evidence suggested that some facilities classified as gathering should be classified as transmission.105 The Committee also found that some gathering lines, because of their size or other physical characteristics, should be regulated.106 The Committee provided DOT with “a great deal of discretion” in defining gathering and determining which facilities to regulate, finding that the agency “should find out whether any gathering lines present a risk to people or the environment, and if so how large a risk and what measures should be taken to mitigate the risk.”107 This directive made it clear that Congress intended PHMSA to take a risk-based approach to its determination of which, if any, rural gas gathering lines to regulate.108

In 1999 PHMSA convened a discussion among the various gathering stakeholders in which it sought comments on a new definition of gathering and which gathering lines should be regulated.109 PHMSA focused on a definition suggested by the Gas Processors Association (GPA), under which the end of gathering was based on certain “furthermost downstream” points.110 While deliberating this potential definition, PHMSA published an advisory bulletin interpreting the end of gathering based on judicial precedent

104 Id. § 60101(a)(21)(B).
106 Id.
107 Id.
108 Gas Gathering Line Definition; Alternative Definition for Onshore Lines and Proposed Safety Standards, 70 Fed Reg. 57,536, 57,541 (Oct. 3, 2005) (“In 1992, an amendment to the pipeline safety law gave DOT authority to regulate the safety of rural lines where warranted by risk.”).
109 64 Fed. Reg. 12,147.
110 Id. at 12,148 (Mar. 11, 1999).
and historical interpretation. In the advisory bulletin, PHMSA stated that gathering would in most cases begin at or near the wellhead, and terminate at the outlet of a processing plant.

In 2003, PHMSA held public meetings and sought additional comments on the definition of gathering and what, if any, safety rules were needed for rural gathering lines. Following the meetings, PHMSA published a notice requesting comments on the beginning and end points of gathering, factors it should consider in defining the gathering, and other issues related to the regulation of gathering. Industry commenters urged PHMSA to define gathering in accordance with industry standards published in the newly developed American Petroleum Institute (API) Recommended Practice 80, “Guidelines for the Definition of Onshore Gathering Lines” (RP 80). RP 80 was developed to help operators determine the start and endpoints of onshore gas gathering lines through a series of definitions, descriptions, and diagrams intended to represent the varied and complex nature of production and gathering operations.

Trade associations and the Department of Energy filed comments recommending that PHMSA identify and analyze risks related to rural gathering lines, and target regulations towards identified problems. GPA presented a survey of 40 operators of rural gathering lines detailing incidents that impacted the public over a five-year period, and found that the risk posed by rural gathering lines, while not insignificant, was much lower than that of other pipelines.

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112 Id.
116 Id. at 13,289.
117 Id. at 13,290.
118 GPA presented the survey at a meeting of PHMSA’s gas pipeline safety advisory committee on February 5, 2004 (Docket No. PHMSA-1998-4470-120). GPA found that

Following the 2003 meetings and associated public comments, PHMSA issued a proposed rule that would incorporate RP 80 as the baseline definition of onshore regulated gas gathering, with certain limitations on the starting point and potential end points of gathering. PHMSA also proposed a tiered model for regulating gathering lines, under which “regulated onshore gathering lines” would be divided into two risk categories, with the higher-risk facilities subject to more stringent regulations. Commenters generally favored the proposed rule.

In 2006, PHMSA issued a final rule adopting the proposed definition of gathering line. Regarding rural gathering, PHMSA concluded that “[r]egulation of an onshore gathering line should . . . depend . . . on the risk the line poses to the public based on its pressure and proximity to people.” Under this analysis, PHMSA decided not to regulate rural, Class 1 lines because of their relatively low risk, but noted that it would consider regulating these lines if future reports indicated that they posed an unacceptable level of risk.

For all other gathering lines, PHMSA adopted the API RP 80 framework with some additional limitations on gathering start and endpoints. Regarding the regulations applicable to gathering, PHMSA implemented

transmission lines impacted the public between three and six times more often than did rural gathering lines, and attributed the rural gathering lines’ lower impact to operators’ safety practices, and to the sparse population surrounding these lines, and their small sizes and low pressures. Id.

120 Id. at 57,542.
123 Id. at 13,291.
124 Id. at 13,297. PHMSA noted, however, that it was considering collecting reports of gathering line incidents in rural areas, and if those reports indicated that Class 1 lines presented an unacceptable level of risk, it would consider expanding its regulations to cover segments of or all Class 1 lines. Id.
125 Id. at 13,291.
a two-tiered, risk-based approach. Lines that may be operated at higher levels of stress and thus at higher risk levels are deemed “Type A lines,” and subjected to more PHMSA regulations than lower-stress, “Type B lines.” Subject to certain important exceptions, Type A lines are subject to the same requirements as transmission lines. Type B lines are subject to more limited requirements, including that new lines and existing lines that are replaced, relocated, or otherwise modified must be designed, installed, constructed, initially inspected and initially tested in accordance with Part 192 requirements. Additionally, Type B lines are subject to requirements pertaining to corrosion control, damage prevention, MAOP, line markers, and public education.

§ 5.04. Shale-Driven Industry Changes.

[1] — Increased Production of Shale Gas.

Since PHMSA’s 2006 gathering rule, U.S. gas production has increased dramatically, driven largely by advancements in horizontal drilling and hydraulic fracturing technologies that have enabled drillers to more economically produce gas in shale formations. Between 2007 and 2010, U.S. production of shale gas increased over fourfold. Analysts predict that by

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126 See id. at 13,299-300.
127 Type A lines are all metallic lines outside Class 1 areas in which the MAOP produces a hoop stress of 20 percent or more SMYS, and non-metallic lines outside Class 1 areas with MAOPs of greater than 125 psig. Type B lines are (1) metallic lines whose MAOP produces a hoop stress of 20 percent of more SMYS, and non-metallic lines whose MAOP is 125 psig or less; and (2) located within 220 yards of areas of more than 46 buildings intended for human occupancy, or in certain cases, located within 220 yards of areas of 10 to 46 such buildings. See 49 C.F.R. §§ 192.5 & 192.8.
128 49 C.F.R. § 192.9. Type A lines are not subject to requirements concerning the passage of smart pigs (49 C.F.R. § 192.150) and integrity management (49 C.F.R. Part 192, subpart O).
129 Id.
2035, total U.S. shale gas production will more than double from its 2012 level of roughly 23 Bcf/d.\footnote{132}

In the Marcellus and Utica shale formations in Pennsylvania, Ohio, and West Virginia, production has increased dramatically in recent years and is expected to continue to grow. A late 2011 industry study forecasts gas production from Pennsylvania Marcellus formations to double in the next two years.\footnote{133} In May of 2013, the Ohio Department of Natural Resources released production reports for 2012 for all horizontal wells drilled in the Ohio Utica formation, reporting an 80 percent increase in production from the prior year.\footnote{134}


Increased Marcellus and Utica production has given rise to significant new construction of gathering facilities needed to transport the gas to transmission pipelines for transportation to growing demand centers. Analysts expect the demand for new infrastructure to continue to grow. In 2011, the Interstate Natural Gas Association of America (INGAA) Foundation commissioned a study of the country’s midstream natural gas infrastructure needs through 2035.\footnote{135} The study found that an average of 16,500 miles of new gathering pipelines will be needed each year through 2035, at a cost of $1.7 billion per year, along with an investment of $900 million per year in new gas processing plants.\footnote{136} A 2011 Nature Conservancy study found that at least 10,000 miles of new gathering pipelines could be built by 2030 to


\footnote{136} Id. at 2-5.
support Marcellus production in Pennsylvania alone. The Utica shale is also attracting substantial investment in midstream gathering and processing infrastructure. This new midstream gathering infrastructure is drawing the attention of PHMSA, state regulators and the public.


Recent high-profile pipeline incidents in San Bruno, California, Marshall, Michigan, Allentown, Pennsylvania and elsewhere have increased public awareness of pipeline safety issues. These recent and historical pipeline incidents have created a small but growing group of public advocacy groups focused on pipeline safety. Many of these groups have made gathering pipeline safety a priority in their advocacy efforts with Congress and PHMSA.

The Pipeline Safety Trust (Trust) was established after a 1999 pipeline accident in Bellingham, Washington, and is the primary national public advocacy organization on pipeline safety issues. Trust leaders have provided Congressional testimony on the implementation of pipeline safety laws and in support of legislation to strengthen the PSA. The Trust also filed comments in PHMSA’s 2011 ANPRM, asserting that PHMSA should apply its gas transmission line regulations to all gathering lines, irrespective of class location. The Trust asserts that the differences in risk between transmission lines and gathering lines are diminishing.

142 Id.
In Pennsylvania, the Pipeline Safety Coalition was formed in response to pipeline construction in Chester County in 2008. The Pipeline Safety Coalition seeks to “serve as a clearinghouse for factual, unbiased information; to increase public awareness and participation through education; to build partnerships with residents, safety advocates, government and industry; and to improve public, personal and environmental safety in pipeline issues.”

The group has hosted numerous workshops to educate local stakeholders and government officials on pipeline projects being proposed in their communities.

The League of Women Voters of Pennsylvania (LWVPA) also has become engaged in pipeline safety after having conducted a series of studies evaluating Marcellus shale development. In 2012, the LWVPA released a study concerning the safety of pipelines in Pennsylvania, focusing on Lycoming County. The LWVPA asserts that its “main concern regarding regulation of pipelines associated with shale gas developments in Lycoming County and across Pennsylvania involves the lack of federal and state regulatory authority with regards to rural and low-population density geographic areas, and in some cases confusion over what those regulations mean.” The LWVPA recommended that PHMSA take action to ensure that all gas pipelines are regulated, including removing exemptions that apply to rural gathering facilities, more clearly defining regulated gas gathering lines, and applying integrity management requirements to Class 1 gathering lines.

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144 Id.
145 Id. at “Pipeline Safety Coalition Workshops,” http://www.pscoalition.org/PSC/PSC_Workshops.html (last visited June 14, 2013).
148 Id. at 39.
§ 5.05.   Changes Ahead.

In response to the expansion of pipeline infrastructure associated with shale gas production, Congress and PHMSA have both begun to examine the adequacy of current gas gathering regulations. Some states have also taken an increased interest in gas gathering pipeline safety.


In the 2011 Act, Congress directed PHMSA to review the sufficiency of existing federal and state regulations over gathering facilities, and to submit a report to Congress by January 3, 2014. The 2011 Act requires PHMSA to make recommendations on: (A) the sufficiency of existing federal and state laws and regulations to ensure the safety of gas and hazardous liquid gathering lines; (B) the economic impacts, technical practicability, and challenges of

149 Id. at 4.
152 Id.
applying existing federal regulations to gathering lines that are not currently subject to federal regulation when compared to the public safety benefits; and (C) subject to a risk-based assessment, the need to modify or revoke existing exemptions from federal regulation for gas and hazardous liquid gathering lines.154 This study is currently underway.

The requirement that PHMSA consider factors beyond a simple cost/benefit analysis suggests that Congress expects PHMSA to proceed cautiously in determining whether to expand its gathering regulations. This is consistent with Congress’ historically cautious treatment of changes in gathering regulation expressed in the 1992 amendments to the PSA. The 1992 Act required that PHMSA define “gathering line” and “regulated gathering line” in light of numerous operational factors, including risk.155


Even before the 2011 Congressional directive to study gathering pipeline regulation, PHMSA expressed concerns in its 2011 ANPRM that many new rural gathering lines being built to support shale gas production are greater in diameter and operating pressure than legacy gathering pipelines.156 PHMSA asserts that these new gas gathering lines may pose a greater threat to the public than smaller-diameter, lower-pressure legacy gas gathering lines.157 More recently, at a 2012 meeting of PHMSA’s Technical Advisory Committees, PHMSA Administrator Cynthia Quarterman stated that PHMSA needs to “begin to take a very, very close look” at the regulation of new gathering facilities, including Class 1 lines, “some of which are very large diameter with over a 1,000 psi.”158 Another PHMSA official noted the rapid build-out of new gathering facilities and the “[n]eed to regulate riskier

154 Id. § 21(b)(2), 125 Stat. at 1917.
157 See id.
‘rural’ gathering lines.” The official made it clear that PHMSA does not “seek, generally speaking, to [regulate] every square inch of every gathering line anywhere,” but does intend to regulate gathering to the extent justified by risks posed to people or the environment. PHMSA identified gathering rulemaking as a top priority for 2013.

In its 2011 ANRPM, PHMSA did not make any specific rulemaking proposals, but sought comment on whether it should establish a new, risk-based regime of safety requirements for high-pressure, large-diameter rural gas gathering lines. PHMSA also sought comments related to the definition of “gathering line,” including whether it should adopt a new definition of the term and whether there are difficulties in applying API RP 80 to determine the start and endpoints of gathering. PHMSA observed that conflicting and ambiguous language in API RP 80 can produce multiple classifications

\[\text{§ 5.05}\]
for the same pipeline system, and identified the potential for manipulation of designations under that standard.\textsuperscript{164}

Additionally, PHMSA sought comments on whether it should apply internal corrosion control and integrity management requirements to gas gathering facilities, and require operators of all gathering lines to submit annual, incident, and safety-related reports, replacing its current practice of only requiring such reports from regulated facilities.\textsuperscript{165}

Industry comments on the 2011 ANPRM generally advocated that PHMSA take no action prior to completing the gathering study required by the 2011 Act, and opposed any expansions of regulatory requirements to cover currently unregulated rural gathering facilities.\textsuperscript{166} The GPA, the leading trade association for the midstream industry, stated that completion of PHMSA’s gathering study is an essential prerequisite to any substantive changes to gathering regulations.\textsuperscript{167} GPA also suggested that after PHMSA completed the study, if the agency still believed gathering changes should be considered, that it should issue an ANPRM to obtain comments on what changes might be appropriate.\textsuperscript{168} GPA asserted that it was unnecessary for PHMSA to expand reporting requirements to Class 1 gathering lines, and that the safety risks did not warrant the application of expanded corrosion control and integrity management requirements to cover gas gathering lines.\textsuperscript{169} GPA did offer to work with PHMSA informally to develop appropriate statistics on Class 1 gathering lines.\textsuperscript{170} Members of the public and pipeline safety advocacy groups generally asserted that PHMSA should regulate Class 1 gathering lines.

\begin{footnotes}
\item[164] See id. at 53,100. See also PHMSA, Interpretation Letter to CDX Gas, PI-09-0002, at 2-3 (July 14, 2009).
\item[165] Id. at 53,086.
\item[167] Id.
\item[168] Id. at 2.
\item[169] Id. at 3.
\item[170] Id. at 8.
\end{footnotes}
gathering and should apply its transmission line regulations to all gathering pipelines.\footnote{See § 5.04[3], infra.}

PHMSA has indicated that it expects to publish a proposed rule in early 2014 that may address gathering issues along with many other potential changes to the gas transmission pipeline regulations.\footnote{See DOT, Significant Rulemaking Report, at No. 113 (May 2013), http://www.dot.gov/regulations/may-2013-significant-rulemaking-report-archive.} The congressional gathering study is also due in early 2014, so it is possible that PHMSA’s proposed rule will reflect the findings of the study. Given the subjects raised in the 2011 ANPRM, and PHMSA’s public remarks since then, it is reasonable to expect that the agency may propose significant changes to the gathering regulations.


Aside from the possible expansion of gathering regulations, PHMSA’s 2011 ANPRM also sought comment on potential changes to numerous gas transmission regulations.\footnote{See Pipeline Safety: Safety of Gas Transmission Pipelines, 76 Fed. Reg. 53,086 (Aug. 25, 2011).} Any transmission rule changes would likely affect certain gathering lines because nearly all of the transmission regulations also apply to higher-pressure Type A gathering facilities, and a smaller set of these requirements apply to lower-pressure Type B gathering facilities.\footnote{See § 5.03[3], infra.} The ANPRM seeks comment on the requirements related to valve spacing and the need for remotely or automatically controlled valves; corrosion control; integrity management; pressure testing; and many other subjects.\footnote{Pipeline Safety: Safety of Gas Transmission Pipelines, 76 Fed. Reg. 53,086, 53088, 53097, & 53099 (Aug. 25, 2011).}


In addition to PHMSA and Congress, state regulators in the Marcellus and Utica regions have increased their scrutiny over gathering infrastructure.
Beyond any future PHMSA regulatory changes that the states may adopt and apply to gas gathering lines through their certified intrastate safety programs, some states have already begun to move forward on broader regulation of gathering lines.

In late 2011, the Pennsylvania governor signed Act 127, giving the Pennsylvania Public Utilities Commission (PA PUC) jurisdiction over non-public utility gas gathering lines for the first time.176 Rural, Class 1 gathering lines remain unregulated but the PA PUC has begun collecting information about the mileage of these pipelines pursuant to its implementation of the Act 127 annual registration and reporting requirements.177

In the Utica shale, the Ohio governor recently signed legislation broadening state authority over gathering lines beyond those currently regulated under the PHMSA regulations to include certain new Class 1 pipelines and lines from processing plants.178 Class 1 lines and processing plant gas stub pipelines179 constructed after the passage of the legislation must comply with federal pipeline design standards applicable to transmission lines.180 Ohio will also subject Class 1 pipelines to several other PHMSA requirements, including corrosion control, damage prevention, MAOP, leak surveys, and additional reporting.181

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179 A “processing plant gas stub pipeline” means a gas pipeline that transports transmission quality gas from the tailgate of a gas processing plant to the inlet of an interstate or intrastate transmission line and that is considered an extension of the gas processing plant, is not for public use, and is not regulated under the Pipeline Safety Act or PHMSA’s rules. Ohio Rev. Code § 4905.90(M).
180 Id. § 4905.911(A)(1).
181 Id. § 4905.911(A)(2).
In West Virginia, another area with growing Marcellus and Utica production, rural gathering remains exempt from most regulatory requirements.\textsuperscript{182} However, in April of 2013, the state passed legislation increasing penalty caps for violations of pipeline safety regulations to federal levels.\textsuperscript{183}

§ 5.06. Potential Impacts of Gas Gathering Regulation on Production.

As detailed above, gas gatherers face increased pipeline safety regulatory pressure from three sources. First, PHMSA is placing pressure on the states to conduct more enforcement and assess more civil penalties against pipeline operators. Second, some states have taken an independent interest in gathering and have adopted regulations for gas gathering pipelines that go beyond PHMSA requirements. Third, PHMSA is considering whether to remove exemptions for certain currently unregulated gas gathering pipelines, and subject these and other gathering lines to more stringent regulations. If PHMSA were to issue rules that removed such exemptions, most states would eventually adopt PHMSA’s rule changes and implement them on intrastate gas gathering lines in order to maintain their certifications.

More stringent oversight under existing gathering regulations and the future expansion of these regulations may increase compliance costs for gatherers and, in some cases, could impact the service they are able to provide. Producers and gatherers may wish to consider how the impacts on gas gathering may affect their costs and ability to bring gas to market.


Even without any changes to the gathering regulations, gatherers and producers may feel the effects of increased state pipeline safety oversight. For example, increased state scrutiny over gathering lines could result in compliance challenges for gatherers, particularly in states like Pennsylvania, where the State only recently obtained the authority to regulate most

\textsuperscript{182} W. Va. Code St. R. § 150-4-9 (2012).
gathering. The simple math of more inspections and state resources combined with increased pressure from PHMSA to enforce the pipeline safety regulations may result in new compliance issues.

Gatherers and producers also should be mindful of how changes in population may affect the regulatory classification of gathering lines. Population encroachment can result in the reclassification of gathering from unregulated rural Class 1 lines to non-rural, Class 2 lines or greater. When a currently unregulated pipeline becomes regulated, it may face maintenance and testing requirements that could cause service disruptions and affect upstream production. Depending on available construction and design data, a class location increase could result in the need to perform pressure testing of the pipeline to establish or confirm a MAOP.\(^\text{184}\)

Gatherers and producers may also be affected by recent PHMSA regulatory determinations regarding farm taps.\(^\text{185}\) Farm taps are pipelines directly off of production, gathering or transmission pipelines that feed one or more farm, residential or small commercial customers.\(^\text{186}\) Historically, pipelines provided farm tap service to landowners in exchange for pipeline easements or other land rights.\(^\text{187}\) PHMSA has asserted that most farm tap piping meets the definition of a distribution pipeline under PHMSA regulations.\(^\text{188}\) Thus, even if the pipeline to which a farm tap connects is unregulated gathering or production, PHMSA may assert that the tap itself is subject to the pipeline safety requirements. PHMSA has signaled that it may revise this interpretation to exclude farm taps from certain regulations in a future rulemaking, but the current interpretation remains in effect.\(^\text{189}\)

As a result, producers and gatherers with farm taps may wish to review their compliance plans and procedures for farm taps.

\(^{184}\) See 49 C.F.R. §§ 192.9(c), 192.9(d)(5) & 192.619.


\(^{186}\) Id.

\(^{187}\) Id.

\(^{188}\) Id. at 2.

\(^{189}\) See id. at 5.

Perhaps the most significant potential change for gas gatherers and upstream producers is the possibility that some currently exempt, Class 1 gas gathering lines may become regulated. Although newer rural gas gathering pipelines are often constructed in accordance with established industry standards, such as ASME B31.8, and in light of the possibility of future pipeline safety regulation, this may not be the case for older gathering lines. If rural gas gathering lines become subject to the operations, maintenance, periodic testing, MAOP and other requirements of Part 192, piping modifications and pressure testing could be required in order to comply. This could have substantial operational cost and service impacts on gatherers and the producers that rely on them for gathering service.

In addition, PHMSA has suggested potential changes in how the API RP 80 industry standard should be used to determine regulated gathering start and endpoints. API RP 80 defines production facility, so changes in API RP 80 or how it is applied under PHMSA’s regulations could potentially move the starting point of regulated gathering upstream, into infrastructure currently considered to be production. Changes in gathering endpoints could also result in the reclassification of some gathering lines as transmission lines or vice-a-versa, thereby affecting their compliance obligations under PHMSA regulations.

In light of the current federal and state focus on pipeline safety and potential changes to the gathering regulations, gatherers and producers may wish to inquire into the present and potential future regulatory status of gathering assets they are selling, acquiring, building or seeking to use to bring gas to market.

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190 API Recommended Practice 80, Guidelines for the Definition of Onshore Gas Gathering Lines, § 2.3 (1st Ed. Apr. 2000).