

(1) Regulations that are prescribed by Federal law, such that the Department exercises no discretion as to whether to promulgate the Regulation and as to what is prescribed by the Regulation. For Regulations described in this paragraph (g)(1) that are adopted after the effective date of this section, the Federal law described in this paragraph (g)(1) shall be cited in the notice of adoption.

(2) Regulations whose expiration pursuant to this section would violate any other Federal law.

(3) This section.

(4) Regulations that involve a military or foreign affairs function of the United States.

(5) Regulations addressed solely to internal agency management or personnel matters.

(6) Regulations related solely to Federal Government procurement.

(7) Regulations that were issued jointly with other Federal agencies, or that were issued in consultation with other agencies because of a legal requirement to consult with that other agency.

(h) When the Department commences the process of performing an assessment or review, it shall state on a Department-managed website the Regulation(s) whose assessment or review it is commencing. The public will be able to submit comments regarding the Regulation(s) in the manner specified on this website. The public can also submit comments in the manner specified on the website requesting that the Department assess or review a Regulation.

(i) Any provision of this section held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this section and shall not affect the remainder thereof or the application of the provision to persons not similarly situated or to dissimilar circumstances.

#### **§ 6.2 through 6.5 [Reserved].**

Dated: October 21, 2020.

**Alex M. Azar II,**

Secretary, Department of Health and Human Services.

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## **DEPARTMENT OF TRANSPORTATION**

### **Pipeline and Hazardous Materials Safety Administration**

#### **49 CFR Parts 192 and 195**

[Docket No. PHMSA-2019-0199]

### **Pipeline Safety: Midstream Facilities Frequently Asked Questions**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notification and request for comments.

**SUMMARY:** PHMSA is making available for comment a set of draft frequently asked questions (FAQs) regarding federal oversight of midstream processing facilities. Specifically, this guidance will delineate where PHMSA and the Occupational Safety and Health Administration (OSHA) will each perform inspection and enforcement activities for midstream processing facilities where there is overlapping authority. The proposed guidance consists of a set of seven FAQs that were developed by the Midstream Processing Working Group (Working Group) established by the Technical Pipeline Safety Standards Committee, also known as the Gas Pipeline Advisory Committee (GPAC), and the Technical Hazardous Liquid Pipeline Safety Standards Committee, also known as the Liquid Pipeline Advisory Committee (LPAC).

**DATES:** Persons interested in submitting comments on the draft FAQs must do so by January 4, 2021.

**ADDRESSES:** You may submit comments, which should be identified by docket number PHMSA-2019-0199, by any of the following methods:

- **Federal eRulemaking Portal:** Comments may be submitted to <http://www.regulations.gov>. Please follow the online instructions to submit comments.
- **Mail:** Comments may be submitted by mailing them to the Dockets Management System, U.S. Department of Transportation, Dockets Operations, M-30, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.
- **Hand Delivery:** Comments may be submitted by hand-delivering them to 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001. Comments may be delivered between 9 a.m. and 5 p.m. ET, Monday through Friday, except for Federal holidays.
- **Fax:** Comments may be faxed to 202-493-2251.

• **Instructions:** Identify docket number PHMSA-2019-0199 at the beginning of your comments. If you submit your comments by mail, you must submit two copies. If you wish to receive confirmation that PHMSA received your comments, you must include a self-addressed stamped postcard. Internet users should submit comments at <http://www.regulations.gov>.

• **Privacy Act:** DOT may solicit comments from the public regarding certain general notices. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

• **Confidential Business Information:** Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this document contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this document, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 CFR 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as "Confidential"; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under FOIA, and they will not be placed in the public docket of this notification. Submissions containing CBI should be sent to Sayler Palabrica at [sayler.palabrica@dot.gov](mailto:sayler.palabrica@dot.gov). Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

• **Docket:** The docket containing background documents and received comments is available at <http://www.regulations.gov>. Once on this site, please follow the online instructions for accessing the dockets. Alternatively, you may review these documents in person at the street address listed above.

**FOR FURTHER INFORMATION CONTACT:**

Sayler Palabrica, Transportation Specialist, at 202–366–0559.

**SUPPLEMENTARY INFORMATION:** PHMSA provides written clarification regarding the pipeline safety regulations found at 49 CFR parts 190–199 in the form of FAQs and other guidance materials. PHMSA is requesting public comment on a set of draft FAQs that were developed by the Working Group that was established by the GPAC and LPAC. These draft FAQs are intended to clarify when each of PHMSA or OSHA intends to exercise its respective regulatory inspection and enforcement authority over midstream processing facilities involved in pipeline transportation of energy products. The intent of this guidance is to ensure that there is no confusion or unnecessary gaps or overlaps in Federal oversight of midstream processing facilities. All guidance, including these draft FAQs, is intended to be explanatory in nature. FAQs are provided to help the regulated community understand how to comply with the regulations, but they are not substantive rules themselves and do not create legally enforceable rights, assign duties, or impose new obligations not otherwise contained in the existing regulations and standards. However, an operator who is able to demonstrate compliance with the FAQs is likely to be able to demonstrate compliance with the relevant regulations. If a different course of action is taken by an operator, the operator must be able to demonstrate that its conduct is in accordance with the regulations.

The draft FAQs are included in this document. Comments submitted in response to this document and other supporting documents may be found in Docket No. PHMSA–2019–0199 at <https://www.regulations.gov>. Before finalizing the FAQs, PHMSA will consider all substantive comments received on or before the comment closing date. Comments received after the closing date will be considered to the extent practicable. Once finalized, the FAQs will be posted on PHMSA's public website at <https://www.phmsa.dot.gov/about-phmsa/phmsa-faqs>.

**Background**

Natural gas, crude oil, and associated fluids typically go through a number of processing steps before they can be delivered to end users as refined petroleum products, natural gas liquids, natural gas, and other products. Some of the facilities where these processes take place are midstream processing facilities

downstream of initial production but upstream of end users.

For the purposes of this guidance document, a “midstream processing facility” is a processing facility that receives products being transported by PHMSA-jurisdictional pipelines and re-injects those products for continued transportation by pipeline. In other words, a midstream processing facility is a processing facility with piping or storage that is engaged in the transportation of gas or hazardous liquids by pipeline, and is therefore a pipeline facility subject to PHMSA jurisdiction. The pipeline systems within or associated with midstream processing facilities may be subject to regulation by one or more Federal agencies, depending on the facility's purpose and configuration. PHMSA regulates the safety of transportation-related pipeline systems associated with midstream processing facilities in 49 CFR parts 190–199, while OSHA regulates safety within midstream processing facilities using the Process Safety Management (PSM) regulations (29 CFR 1910.119). Uncertainty regarding where each of these respective regulatory authorities begins and ends in connection with midstream processing facilities has led to confusion among regulated entities and unnecessary duplication of regulatory efforts by the Federal Government.

To address these issues, the GPAC and LPAC established the Working Group in 2014. The Working Group consisted of members representing PHMSA, OSHA, and the midstream processing industry. The goal of the Working Group was to better understand and improve the safety of midstream processing facilities by increasing clarity and eliminating unnecessary gaps and overlaps in Federal safety oversight. In particular, the Working Group was tasked with evaluating the equivalency of PHMSA and OSHA midstream processing facility safety requirements; identifying means to delineate exercise of inspection and enforcement responsibilities (“regulatory oversight activities”) between the two agencies by clarifying the inlet and outlet boundaries of midstream processing facilities; and addressing the oversight of midstream processing facilities with pass-through, bypass, and storage configurations, including storage-related piping.

The Working Group met on several occasions in 2014 and 2015. During that time, the Working Group found that PHMSA's pipeline safety regulations in 49 CFR parts 190–199 and OSHA's PSM requirements at 29 CFR 1910.119

provide equivalent safety for midstream processing facilities. However, the enforcement of both their regulatory regimes to the same facilities created unnecessary contradictions and confusion, potentially decreasing safety. Therefore, in the interest of improving safety, ensuring effective government oversight, and reducing regulatory redundancy, PHMSA and OSHA agreed to delineate where they each would perform regulatory oversight activities for midstream processing facilities based on the predominate use of the facilities in question. As discussed during the Working Group's presentation to the GPAC and the LPAC on August 26, 2015, in order to apply the FAQs, an operator will be expected to make records and documentation that prove the predominate use of a facility available to PHMSA and OSHA for review and verification. See pages 71–75 of the transcript for the second day of the meeting, available in the docket for this document and at <https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=105&nocache=8221>.

These FAQs reflect agreement by PHMSA and OSHA to prioritize safety and regulatory clarity in regulatory oversight activities; however, nothing in these FAQs changes the agencies' statutory authority with respect to midstream processing facilities. For example, PHMSA may still issue a corrective action order under 49 U.S.C. 60112 or a safety order under 49 U.S.C. 60117(l) if a safety issue is identified.

The Working Group proposed seven draft FAQs to help clarify the delineation of regulatory oversight activities between PHMSA and OSHA for the regulated industry and Federal and State pipeline safety inspection and enforcement staff. PHMSA is soliciting public comments on these draft FAQs, which address the following issues:

- Defining the terms “processing” and “processing facility.”
- Addressing oversight issues associated with bypass configurations, complex facilities with multiple processing units, and gas storage systems.
- Identifying the upstream and downstream demarcation points between pipeline transportation facilities that will be subject to regulatory oversight activities under PHMSA's pipeline safety regulations in 49 CFR parts 190 through 199, and processing facilities that will be subject to regulatory oversight activities by OSHA under its PSM requirements in 29 CFR 1910.119.

Historically, PHMSA and OSHA have coordinated efforts to ensure that there are no gaps in oversight over any

individual facility and this cooperation will continue after this guidance is finalized.

The proposed definitions contained within these FAQs are limited in use for applying these FAQs for the purpose of delineation between PHMSA and OSHA exercise of their respective regulatory oversight authorities. The proposed FAQ definitions will not be codified in Parts 190 through 199, and are not intended to be used for purposes other than to help the public interpret the application of PHMSA and OSHA's regulations to a pipeline facility.

#### **Executive Order 13891 and DOT Guidance Procedures**

This draft guidance document has been reviewed and cleared by the PHMSA Office of Chief Counsel in accordance with the Department's guidance procedures in 49 CFR 5.25–5.51. It has been determined to be non-significant and, as defined in 49 CFR 5.37, not otherwise of importance to the Department's interest. This draft guidance document will be posted on PHMSA's website in accordance with 49 CFR 5.31 and Executive Order 13891.

#### **Draft Midstream Processing Facilities FAQs**

This draft guidance document is intended to provide clarity to the public regarding existing pipeline safety standards. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, but pipeline operators must comply with the underlying safety standards.

##### *Q 1: Definitions*

##### **Q 1–A: What is Processing?**

For the purposes of this guidance document, “processing” is defined as the treatment of products including, but not limited to dehydration, removal of contaminants by separation or filtration, blending with other products, and heating or cooling units that separate or purify products and remove condensates by distillation.

These FAQs do not cover facilities used for the chemical conversion of crude oil into refined petroleum products (*i.e.* refining facilities).

##### **Q 1–B: What is a Processing Facility?**

A “processing facility” comprises one or more individual units that perform a

processing operation (see Q 1–A) and meets the criteria for applicability of the Occupational Safety and Health Administration (OSHA) process safety management regulations (29 CFR 1910.119).

##### **Q 2: How does one delineate the boundary between pipeline transportation and a processing facility?**

PHMSA policy indicates that, in deference to OSHA's exercise of its authority, it will not conduct inspection and enforcement activities (“regulatory oversight activities”) under 49 CFR part 192 and 195 for pipelines downstream of the first pressure control device entering a processing facility, and upstream of the last pressure control device leaving that processing facility, except as described in provisions of FAQ 4.

##### **Q 3: How does PHMSA's policy apply to regulatory oversight of a pipeline entering a processing facility that bypasses a pressure control device?**

A pipeline that predominantly (more than 50% of the time during the preceding calendar year) bypasses a pressure control device will be subject to PHMSA regulatory oversight activities under 49 CFR part 192 or 195. Further, if a pipeline bypasses a pressure control device that is permanently no longer in service, the pipeline will be subject to PHMSA regulatory oversight activities under 49 CFR part 192 or 195.

##### **Q 4: How does PHMSA's policy apply to regulatory oversight of piping that bypasses processing downstream of the first pressure control device?**

Piping that is downstream of the first pressure control device that is not predominately (more than 50% of the time during the previous calendar year) used to bypass processing will be subject to regulatory oversight activities by OSHA under its process safety management regulations. Piping that is downstream of the first pressure control device that is predominantly (more than 50% of the time during the previous calendar year) used to bypass processing will be subject to PHMSA regulatory oversight activities under 49 CFR part 192 or 195.

##### **Q 5: What if a given section of piping located on the grounds of a processing facility served by PHMSA-regulated pipelines connects two processing units or is otherwise used for a processing function?**

If the piping is located downstream of the first pressure control device entering the facility and upstream of the last pressure control device leaving the facility, it would be subject to regulatory oversight activities by OSHA under its process safety management regulations. PHMSA policy indicates that in deference to OSHA's exercise of its authority, this section of piping would not be subject to PHMSA regulatory oversight activities under 49 CFR part 192 or 195.

##### **Q 6: How is underground storage and associated piping located on the grounds of a processing facility regulated?**

Piping associated with underground storage used for the “purpose of managing processing facility inventory” will be subject to regulatory oversight activities by OSHA under its process safety management regulations. Piping associated with storage caverns used for transportation will be subject to PHMSA regulatory oversight activities under 49 CFR part 192 or 195. Additionally, underground natural gas storage facilities, as defined in § 192.3, must comply with the applicable reporting requirements in 49 CFR part 191 and underground natural gas storage safety requirements in § 192.12.

##### **Q 7: How are pipelines connecting storage or processing facilities regulated when traversing public or private lands (outside the grounds of storage or processing facilities)?**

Pipelines exiting a pressure control device of storage or processing facilities and traversing public or private lands outside the grounds of storage or processing facilities will be subject to PHMSA regulatory oversight activities under 49 CFR part 192 or 195.

Issued in Washington, DC, on September 1, 2020, under authority delegated in 49 CFR 1.97.

**Alan K. Mayberry,**

*Associate Administrator for Pipeline Safety.*

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