

May 29, 2024

Mr. Alan K. Mayberry
Associate Administrator
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Re: Petition for Reconsideration of “Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments,” Final Rule, PHMSA-2016-0002 (April 29, 2024)

Dear Mr. Mayberry:

Pursuant to 49 C.F.R. § 190.335(a), the Interstate Natural Gas Association of America (INGAA),¹ the American Public Gas Association (APGA),² the American Gas Association (AGA),³ the American Fuel and Petrochemical Manufacturers (AFPM),⁴ the Liquid Energy Pipeline Association (LEPA),⁵ and the American Petroleum Institute,⁶ collectively, the

¹ INGAA is comprised of 27 members, representing the vast majority of the U.S. interstate natural gas transmission pipeline companies. INGAA’s members operate nearly 200,000 miles of pipelines and serve as an indispensable link between natural gas producers and consumers.

² APGA is the national, non-profit association of publicly owned natural gas distribution systems. APGA was formed in 1961 as a non-profit, non-partisan organization, and currently has over 740 members in 37 states. Overall, there are nearly 1,000 municipally owned systems in the U.S. serving more than five million customers. Publicly owned gas systems are not-for-profit retail distribution entities that are owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities.

³ Founded in 1918, AGA represents more than 200 local energy companies committed to the safe and reliable delivery of clean natural gas to more than 180 million Americans. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies, and industry associates. Today, natural gas meets more than one third of the United States' energy needs.

⁴ AFPM is the leading trade association representing the makers of the fuels that keep Americans moving and the petrochemicals that are the essential building blocks for modern life. Our industries make life better, safer, healthier and — most of all — possible.

⁵ LEPA (formerly Association of Oil Pipe Lines) promotes responsible policies, safety excellence, and public support for liquids pipelines. LEPA represents pipelines transporting 97 percent of all hazardous liquids barrel miles reported to the Federal Energy Regulatory Commission. LEPA’s diverse membership includes large and small pipelines carrying crude oil, refined petroleum products, NGLs, and other liquids.

⁶ API is the national trade association representing all facets of the oil and natural gas industry, which supports 10.3 million U.S. jobs and 8 percent of the U.S. economy. API’s more than 625 members include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms. They provide most of the nation’s energy and are backed by a growing grassroots movement of more than 25 million Americans.

Associations, respectfully submit this petition for reconsideration in response to the “Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments” Final Rule that the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) published in the *Federal Register* on April 29, 2024 (the Final Rule).⁷

While the Associations appreciate and support PHMSA’s effort to incorporate the more recent editions of voluntary, consensus standards, the Associations seek reconsideration in two critical areas: (1) the failure to incorporate ASME B31.8S (2018) in 49 C.F.R. §§ 192.714(d) and 192.933(d)(1) and (d)(2)(iv) and (2) the imposition of a 60-day effective date. The Associations believe these recommended changes will help improve the final rule, resulting in a better safety outcome.

The Associations also submit their request for a stay of the Final Rule (or in the alternative, a request for a stay of enforcement) to allow time for PHMSA to review and consider this petition. The Associations appreciate the Agency’s review of this petition and request for a stay.

Respectfully submitted,



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⁷ Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments, 89 Fed. Reg. 33,264 (Apr. 29, 2024).



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**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
WASHINGTON, D.C.**

Pipeline Safety: Periodic Updates of
Regulatory References to Technical
Standards and Miscellaneous Amendments

} Docket No. PHMSA-2016-0002
}

PETITION FOR RECONSIDERATION

FILED BY

**THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA
AMERICAN PUBLIC GAS ASSOCIATION
AMERICAN GAS ASSOCIATION
AMERICAN FUEL AND PETROCHEMICAL MANUFACTURERS
LIQUID ENERGY PIPELINE ASSOCIATION
AMERICAN PETROLEUM INSTITUTE**

May 29, 2024

I. Summary

On April 29, 2024, the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) published a final rule in the *Federal Register*, titled “Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments,” (the Final Rule).⁸ The Final Rule incorporates updated editions of at least 20 technical standards⁹ into the pipeline safety regulations.

The Associations appreciate PHMSA finalizing this rule. The incorporation of consensus standards helps improve safety and allows for the use of new technology. However, the Associations seek reconsideration of the Agency’s decision not to incorporate the 2018 edition of ASME B31.8S into 49 C.F.R. §§ 192.714(d)(1) and 192.933(d)(1) and (d)(2)(iv). The incorporation of two separate editions of the same standard is not practicable, reasonable, or in the public interest.¹⁰ The Agency provided little support for this decision and the Associations have identified direct conflicts between the regulation and the 2004 edition. For these reasons, the Associations respectfully request that PHMSA reconsider this portion of the Final Rule and incorporate the 2018 edition of ASME B31.8S in these regulations.

The Associations also seek reconsideration of the 60-day effective date for the Final Rule. Sixty days is not enough time to evaluate the new editions of the incorporated standards, update and implement procedures, train personnel, and acquire new materials. The Associations request an effective date of January 1, 2025, to avoid unnecessary disruptions and delays.

II. PHMSA should reconsider its decision to not incorporate the 2018 edition of ASME B31.8S for sections 192.714(d)(1) and 192.933(d)(1) and (d)(2)(iv).

The Agency’s decision to proceed with the 2004 edition of ASME B31.8S for two regulations, while incorporating the 2018 edition for the remaining references lacks support in the record and will create unnecessary conflicts and confusion. PHMSA initially proposed to incorporate the 2016 edition of ASME B31.8S into the pipeline safety regulations and declined to adopt the 2018 edition.¹¹ The Agency’s basis for this decision was its understanding that the 2018 edition did not include important communication plan requirements.¹² During the comment period, stakeholders explained that the communication plan requirements were still included in the 2018 edition. Stakeholders explained that the specific communication requirements were moved to section 850.9 of ASME B31.8 (2018), which contains guidance for a communications plan. On October 21, 2021, the Gas Pipeline Advisory Committee (GPAC) voted unanimously to

⁸ Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments, 89 Fed. Reg. 33,264 (Apr. 29, 2024).

⁹ *Id.*

¹⁰ 49 C.F.R. § 190.335(a).

¹¹ 89 Fed. Reg. at 33,269.

¹² *Id.* “PHMSA did not originally propose regulatory text incorporating the 2018 edition of ASME B31.8S, as PHMSA explained in the NPRM that it has reviewed the 2018 edition and understood that the updated standard had removed nearly all communications plan requirements found in the portion of that standard (Section 10) explicitly mentioned in § 192.911(m).”

incorporate the 2018 edition of the standard for all references.¹³ PHMSA moved forward in the Final Rule with the 2018 edition. However, the Agency inexplicably declined to incorporate the 2018 edition of the ASME standard for 49 C.F.R. §§ 192.714(d) and 192.933(d)(1) and (d)(2)(iv) and instead reverted to the 2004 edition.

A. The Agency’s decision not to incorporate the 2018 edition of ASME B31.8S for all references in the code lacks support in the record.

PHMSA’s only explanation for this decision was a single statement: “...two of those provisions—specifically, §§ 192.714(d) and 192.933(d)(1) and (d)(2)(iv)—are the subject of a pending legal challenge brought by INGAA against the RIN2 Final Rule.”¹⁴ The Agency did not explain its reasoning or provide any additional information to support this decision.¹⁵ In fact, the use of ASME B31.8S in §§ 192.714(d)(1) and 192.933(d)(1) and (d)(2)(iv) is not covered by the ongoing litigation.

The litigation is not relevant to the decision to update incorporated standards.¹⁶ INGAA petitioned the D.C. Circuit to review five issues. As it relates to section 192.714, the challenge to the rulemaking seeks review of whether PHMSA’s decision to treat a crack or crack-like anomaly with a predicted failure pressure of less than 1.25 times maximum allowable operating pressure (MAOP) as an immediate repair is arbitrary, capricious, and contrary to law.¹⁷ This topic is covered in section 192.714(d)(1)(v)(C).

In contrast, incorporation by reference is not handled in section 192.714(d)(1)(v)(C). PHMSA incorporates section 7 of ASME B31.8S in section 192.714(d)(1). The purpose of incorporating ASME B31.8S in section 192.714(d)(1) is to specify a schedule for evaluation and repairs. The 2016 and 2018 versions of B31.8S, in section 7.2.2, describe use of process for crack evaluation and repair. Appendix A-4 specifies consideration of remaining life in the timing of repairs. It does not specify an immediate repair threshold level as in 192.714(d)(1)(v)(C) and 192.933(d)(1). The RIN 2 provisions set a specific threshold for addressing stress corrosion cracking representing an immediate repair condition, and therefore, the B31.8S (2018) provisions apply whether the criterion is 1.1 or 1.25 times MAOP.

B. By incorporating the 2004 edition, PHMSA has created a conflict with the text of section 192.714(d)(1).

PHMSA’s decision to retain the 2004 edition of ASME B31.8S in section 192.714(d)(1) will create a direct conflict. The current text of section 192.714(d)(1) provides that an operator must repair certain listed conditions¹⁸ and must also follow section 7 of ASME B31.8S (2004) in

¹³ Periodic Standards Update Rule [Voting Slides](#), Joint Meeting of the Gas and Liquid Pipeline Advisory Committees, October 21, 2021.

¹⁴ 89 Fed. Reg. at 33,270.

¹⁵ *Motor Vehicle Mfrs. Of U.S. Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

¹⁶ AGA, APGA, AFPM, LEPA, and API are not parties to INGAA’s pending litigation and take no position on the issues, arguments, or positions raised in that litigation.

¹⁷ *Interstate Natural Gas Assoc. of America v. Pipeline and Hazardous Safety Administration and U.S. Dep’t of Transportation*, Case No. 23-117, Statement of Issues (Aug. 14, 2023) at 2.

¹⁸ 49 C.F.R. § 192.714(d)(1).

setting the schedule.¹⁹ However, section 7 provides that “all indications of stress corrosion cracks require immediate response,” rather than only the listed conditions.²⁰ The regulation also provides that the listed conditions must be remediated immediately but ASME B31.8S (2004) allows for a 5-day period for evaluation and then ‘prompt’ repair.²¹ This disconnect will create confusion among operators and lead to inconsistent inspections by the Agency. A conflict like this should not remain unaddressed. Furthermore, should operators immediately evaluate and promptly repair all indications of stress corrosion cracking, there could be reliability concerns. Operators need time to properly plan maintenance work in order to avoid disruptions in supply to communities, power plants, and industrial users.

C. PHMSA’s decision not to incorporate the 2018 edition will limit the industry’s ability to use certain technology.

PHMSA has stated that the purpose of updating new consensus standards is to “incorporate new technologies, materials, management practices, and other innovations that can improve the physical integrity, and the safe and environmentally protective operation of pipeline facilities.”²² However, retaining the 2004 version of ASME B31.8S disincentivizes the use of electromagnetic acoustic transducer (EMAT) technology, which is useful to identify stress corrosion cracking. The EMAT tool helps operators use risk-based solutions to evaluate and repair the highest risk cracking issues on a reasonable schedule. This technology was invented to improve safety and has grown to be a critical tool for the Associations’ members. The 2004 edition of the standard would preclude operators from using EMAT, and they would instead need to dig up all indications of stress corrosion cracking. Retaining the 2004 edition defeats the goal of adopting new technology and innovation into the pipeline safety regulations. The 2004 edition was written at a time that operators used hydrostatic testing to evaluate stress corrosion cracking and it was the only approved method to assess for SCC. This is why the 2004 edition stipulates the quick repair timeframe. Using that technique, operators would only identify stress corrosion cracking when the pipelines leaked water, which necessitated prompt evaluation and repair. Reverting to the 2004 edition would create a setback in the progress achieved on pipeline safety.

III. PHMSA should set January 1, 2025, as the effective date for the Final Rule.

The Associations request reconsideration of the June 28, 2024, effective date. This timeframe is not practicable or reasonable. Many of the editions that PHMSA added to the regulations impact construction. Changing these requirements in the middle of construction season is impractical, unreasonable, and not in the public interest.²³ Updating API Spec 5L (Line Pipe), API Spec 6D (Valves), API 1104 (Welding), and ASME B36.10M (Welded and Seamless Wrought Steel Pipe), among others, mid-project would cause unnecessary disruptions. Operators would be required to reconsider the purchase of materials, requalify welders, and update procedures.

¹⁹ *Id.*

²⁰ Section 7.2.2 of ASME B31.8S (2004).

²¹ *Id.*

²² 89 Fed. Reg. at 33,265.

²³ 49 C.F.R. § 190.335(a).

Even outside the construction context, implementing these new requirements by the end of June is not practical or reasonable. Federal courts have recognized that the purpose of an effective date or time lag is to “afford [the] persons affected a reasonable time to prepare for the effective date of a rule or rules or to take any other action which the issuance of rules may prompt.”²⁴ Sixty days is not enough time to evaluate the new standards, update procedures, train personnel, acquire new materials, and develop and implement management-of-change processes. More specifically, in order to comply with the new editions, an operator would need to complete the following in advance of construction activities:

- updates to material specifications and procedures
- identification of suppliers who can meet the specifications
- identification of company, contractor and inspection personnel requiring training and qualification
- design and execution of training of company, contractor and inspection personnel
- orientation and training of engineering and supply chain personnel, including the reasons for the changes, and
- purchasing of materials and equipment.

Incorporating new standards into a pipeline safety compliance program takes time. An operator may have to update its information technology infrastructure, including data and document management systems, to accommodate new processes. Revisions to one procedure often affects other procedures that may not be directly addressed by the new regulations. Staff must be fully trained on the new procedures and, if necessary, qualified on new covered tasks under the operator’s operator qualification program. An operator’s supply chain or purchasing department would need to contact manufacturers or suppliers to ensure they can meet the new material standards. It is not reasonable to expect all of these steps to be complete by June 28th.

As PHMSA is aware, the Agency has issued a series of final rules in recent years. These rules represent a comprehensive overhaul of the pipeline safety regulations. Since 2019, pipeline operators have been standing up new programs in response to the RIN-1,²⁵ RIN-2,²⁶ RIN-3²⁷ and the valve rules.²⁸ Some of the compliance deadlines in these rules are ongoing and operators will need to account for these new requirements as they evaluate the new standards incorporated by reference.

²⁴ *Rowell v. Andrus*, 631 F.2d 699, 702 (10th Cir. 1980) (citing United States Senate Committee on the Judiciary, Administrative Procedure Act: Legislative History, 201, 259 (1946)).

²⁵ Pipeline Safety: Safety of Gas Transmission Pipelines: MAOP Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments, 84 Fed. Reg. 52,180 (Oct. 1, 2019).

²⁶ Pipeline Safety: Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments, 87 Fed. Reg. 52,224 (Aug. 24, 2022).

²⁷ Pipeline Safety: Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments, 86 Fed. Reg. 63,266 (Nov. 15, 2021).

²⁸ Pipeline Safety: Requirement of Valve Installation and Minimum Rupture Detection Standards, 87 Fed. Reg. 20,940 (Apr. 8, 2022); Pipeline Safety: Requirement of Valve Installation and Minimum Rupture Detection Standards: Technical Corrections, 88 Fed. Reg. 50,056 (Aug. 1, 2023).

In order to avoid these disruptions and provide a more practical approach, the Associations are requesting that PHMSA set January 1, 2025, as the effective date for these new standard updates. The Associations recommend this start date as it is prior to the beginning of the next construction cycle and will afford operators the necessary time to revise its programs and align purchasing practices with the new requirements.

The Associations also note that PHMSA factored in the time between the Advisory Committee meetings and the publication of the final rule as support for its decision not to grant a longer implementation in the context of a hazardous liquid standard, API RP Std 2350.²⁹ PHMSA made similar arguments in the Leak Detection and Repair Notice of Proposed Rulemaking.³⁰ The Agency's use of the time between a Notice and Final Rule or the GPAC/LPAC meeting and Final Rule to demonstrate an adequate effective date is not supported by law. Federal courts have long held that under the Administrative Procedure Act, the "required publication" of substantive rules is not satisfied by publication of a general notice of proposed rulemaking.³¹ The D.C. Circuit continues to affirm this position rejecting an agency's claim that a 180-day compliance date was justified because the public had notice of the proposed rule for at least a year.³² The D.C. Circuit held that "[w]e will not credit an agency explanation that requires regulated entities to tailor their operations to adhere to an agency's proposed rules. That would make the subsequent notice-and-comment proceedings superfluous and undermine the entire rulemaking process."³³ PHMSA must start its consideration of a reasonable compliance timeframe from the publication of the final rule.

IV. Conclusion

For the foregoing reasons, the Associations respectfully request that the Agency grant the petition, incorporate the 2018 edition of ASME B31.8S for sections 192.714(d)(1) and 192.933(d)(1) and (d)(2)(iv) and set the effective date for the Final Rule to January 1, 2025.

²⁹ 89 Fed. Reg. 33,265, 33,269.

³⁰ Pipeline Safety: Gas Pipeline Leak Detection and Repair, 88 Fed. Reg. 31,890, 31,931 (May 18, 2023).

³¹ *Rowell v. Andrus*, 631 F.2d 699, 702 (10th Cir. 1980); *U.S. v. Gavrilovic*, 551 F.2d 1099, 1103-04 & n.9 (8th Cir. 1977).

³² *Window Covering Mfrs. Ass'n v. Consumer Product Safety Comm'n*, 82 F.4th 1273, 1292 (D.C. Cir. 2023).

³³ *Id.*