

**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

MOTION TO STAY FINAL RULE

**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

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

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.

American Petroleum Institute,⁶ collectively, the Associations, respectfully submit this motion to stay (Motion) the final rule in the above-captioned proceeding (Final Rule).⁷ Specifically, the Associations request that the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) stay the 60-day compliance deadline for the updated technical standards in the Final Rule until the Agency is able to review and respond to the Associations' petition for reconsideration (the Petition).

As discussed in the Petition, the Agency has not afforded pipeline operators enough time to evaluate these new editions, modify and implement their procedures, train their personnel, or acquire new materials. The Associations' members will suffer irreparable harm if this effective date is not stayed or modified. Operators attempting to comply by June 28, 2024, will incur detrimental impacts to their projects as they seek to accommodate these changes on such an expedited timeline. Operators would be required to reconsider the purchase of existing materials, requalify welders, and potentially renegotiate purchasing contracts. PHMSA's stated policy on petitions for reconsideration is to respond, "within 90 days after the date on which the regulation in question is published in the Federal Register."⁸ In this case, that 90-day window would close on or around July 28, 2024, after the effective date of the Final Rule. The Associations also seek a stay of the Final Rule on account of the direct conflict between ASME B31.8S (2004) and 49 C.F.R. § 192.714(d). Failing to address this conflict will lead to unnecessary confusion, compliance risk, and potential civil penalties.

In addition to suffering irreparable harm, the Associations can demonstrate that it has met the other factors necessary for a stay. The Associations have a high likelihood for success on the merits, the Agency will not be harmed, and the public interest favors a stay. Therefore, PHMSA should grant the relief sought in the Motion.

A. Procedural Background and Applicable Legal Standard

On January 15, 2021, PHMSA issued a Notice of Proposed Rulemaking (NPRM), proposing to incorporate by reference more than 20 technical standards into the pipeline safety regulations.⁹ On October 21, 2021, PHMSA held a joint meeting of the Liquid and Gas Pipeline Advisory Committees (Advisory Committees) to discuss the proposals in the NPRM.¹⁰ On April 29, 2024, PHMSA issued the Final Rule.¹¹ On May 29, 2024, the Associations submitted the Petition.

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.

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

⁸ 49 C.F.R. § 190.337(b).

⁹ Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments, 86 Fed. Reg. 3,938 (Jan. 15, 2021).

¹⁰ Periodic Standards Update Rule, Joint Meeting of the Gas and Liquid Pipeline Advisory Committees, October 21, 2021.

¹¹ Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments, 89 Fed. Reg. 33,264 (Apr. 29, 2024).

The standard for obtaining a stay from a federal agency is the same as the standard for obtaining a stay from a federal court.¹² Under the well-established four-part test, a request for stay requires consideration of whether: (1) the movant presents a substantial likelihood of success on the merits; (2) irreparable harm would occur without a stay; (3) potential harm to the movant outweighs harm to others if a stay is not granted; and (4) granting a stay is not contrary to the public interest.¹³ The Associations have met each of these factors.

B. A Stay is Warranted in this Case

1. The Associations are Likely to Prevail on the Merits.

To meet the first prong of the four-part test, the Associations must make “a strong showing that [they are] likely to succeed on the merits”¹⁴ or have raised “serious legal questions.”¹⁵ The Associations have done so here.

a. PHMSA offers very little discussion supporting the reasonableness of a 60-day compliance date.

The Agency did not analyze the impact of changing standards in the middle of construction season. The only discussion of the implementation date involved API Std 2350.¹⁶ In support of the 60-day timeframe, the Agency stated that operators had the time between the Advisory Committee meeting and the Final Rule.¹⁷ Federal agencies must measure the reasonableness of compliance dates from when a Final Rule is published and cannot rely on proposed requirements or voluntary actions.¹⁸ The D.C. Circuit has determined that courts 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.”¹⁹ A 60-day window is not sufficient to transition to the revised standard and keep day-to-day operations functioning smoothly. Operators need sufficient time after the effective date of the rule to determine how to modify its programs, train personnel, and revise practices.

b. PHMSA must address the conflict between the regulation and the incorporated standard.

¹² *Sierra Club v. Jackson*, 833 F. Supp. 2d 11, 29-30 (D. D.C. 2012).

¹³ *Virginia Petroleum Jobbers Ass’n v. Fed. Power Comm’n.*, 259 F.2d 921, 925 (D.C.Cir.1958); *see also*, *Wash. Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Nken v. Holder*, 556 U.S. 418, 434 (2009).

¹⁴ *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (quoting *Hilton v. Braunkill*, 481 U.S. 770, 776 (1987)).

¹⁵ *Risinger v. SOC LLC*, No. 2:12-cv-00063-MMD-PAL, 2015 WL 7573191, *1 (D. Nev. Nov. 24, 2015).

¹⁶ 89 Fed. Reg. at 33,269.

¹⁷ *Id.*

¹⁸ *Window Covering Mfrs. Ass’n v. Consumer Product Safety Comm’n.*, 82 F.4th 1273, 1292 (D.C. Cir. 2023); *Roswell 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).

¹⁹ *Consumer Product Safety Comm’n.*, 82 F. 4th at 1292.

As explained in the Petition, there is a direct conflict between section 192.714(d) and the 2004 edition of ASME B31.8S. The current text of section 192.714(d) provides that an operator must repair certain listed conditions but also must follow section 7 of ASME B31.8S (2004). 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 PHMSA should stay the effective date of the Final Rule until this issue is resolved.

2. Without a stay, the Associations’ members will face irreparable harm.

To meet the second prong of the standard for obtaining a stay, the Associations will need to demonstrate that an injury is (1) certain,²² (2) great²³ and (3) imminent.²⁴ The Associations’ members will face irreparable harm if the relief sought in this Motion is not granted.

The Associations’ members are currently engaging in projects that require compliance with the new incorporated standards. The effective date does not give sufficient time to transition programs to the revised standards while maintaining work on current projects. The Associations’ members will have to either halt these projects causing significant operational disruptions, cost increases, and impacts on customers or risk non-compliance with the revised standards and face possible PHMSA enforcement, which may include civil penalties. These costs are non-recoverable and would significantly impact the Associations’ members.

3. There will be no countervailing effect of a stay and the public interest favors a stay.

When reviewing a request for a stay in a case involving the government, courts have considered the third and fourth prong of the standard in tandem.²⁵ In this case, the irreparable harm that will occur if a stay is not granted will not negatively affect the public. Relying on the currently incorporated versions does not lessen public safety, as the Agency has already determined that these editions are suitable for incorporation and in the public interest. In addition, not granting the stay will harm the public by disrupting pipeline operations and increasing costs with no commensurate safety benefit. The Associations seek a stay to allow the Agency to review the Petition without creating unnecessary impacts.

C. Conclusion

For the reasons provided in this Motion, the Associations respectfully request a stay of the Final Rule. In the alternative, the Associations request a stay of enforcement to allow

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

²¹ *Id.*

²² *Wisconsin Gas Co. v. FERC*, 758 F. 2d 669, 674 (D.C. Cir. 1985).

²³ *Id.*

²⁴ *Cigar Ass’n of Am. v. U.S. Food and Drug Admin.*, 317 F. Supp. 3d 555, 562 (D. D.C. 2018).

²⁵ *Soundboard Ass’n. vs. U.S. Fed. Trade Comm’n.*, 254 F. Supp. 3d 7, 14 (D. D.C. 2017) (citing *Pursuing Am.’s Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016)); *see also*, *Nken*, 556 U.S. at 435.

PHMSA the time to review the Petition and for operators to transition to new standards prior to the next construction season.

Respectfully submitted,



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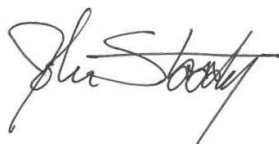
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