



Credible.
Independent.
In the public interest.

October 4, 2022

Alan K. Mayberry
Associate Administrator for Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Comment of Pipeline Safety Trust Opposing Petition for Reconsideration of Pipeline Safety Rule (Docket No. PHMSA-2011-0023) Submitted by Interstate Natural Gas Association of America and the American Petroleum Institute

Dear Associate Administrator Mayberry:

We appreciate the opportunity to comment on the petition for reconsideration submitted by the Interstate Natural Gas Association of America (INGAA) and the American Petroleum Institute (API) relating to the Safety of Gas Transmission Pipelines rule, published August 24, 2022.¹ The Pipeline Safety Trust is the only national non-profit organization that focuses on pipeline safety. We do this through education and advocacy, increasing access to information, and building partnerships with residents, safety advocates, government, and industry to promote safe communities and a healthy environment. It is the Trust's position that this rule, which is the product of over a decade of collaboration between PHMSA, the industry, and other stakeholders should be finalized without substantial revisions.

As you know, the rule was developed in response to the many integrity management (IM) weaknesses identified following PG&E's San Bruno tragedy in 2010. San Bruno exposed the fact that existing IM regulations allowed operators to make operational, maintenance, and safety decisions about their pipelines with missing, flawed, or erroneous information. As a result of these findings, recommendations from the National Transportation Safety Board (NTSB), and demands from Congress, PHMSA developed this rule.

Now, INGAA and API argue that the current regulations offer the flexibility necessary to make decisions about their pipeline systems and that the proposed implementation timeline is unrealistic. But as PHMSA knows, it is this very flexibility and continued delay in implementation of basic pipeline safety standards that has led to far too many disasters, and leaves countless members of the public at risk of failures that will result from further delay.

¹ 87 Fed. Reg. 52,224–52,279 (Aug. 24, 2022).

Moreover, throughout the document, petitioners infer that PHMSA must abide by recommendations made by the Gas Pipeline Advisory Committee (GPAC). This isn't true. As petitioners state: "PHMSA is 'not bound by the conclusions of the [GPAC]' on a proposed rule, but must 'publish the reasons for rejecting its conclusions.'"² GPAC's role to PHMSA as an advisory committee is to review proposed regulatory initiatives to assure technical feasibility, reasonableness, cost-effectiveness and practicability,³ not to act as the final arbiter of PHMSA rulemaking.

GPAC's conclusions were, in large part, adopted in the Final Rule. PHMSA did indeed depart in some instances from GPAC's recommendations, but contrary to petitioners' assertions, it is obvious that it "publish[ed] the reasons" for rejecting GPAC's conclusions.⁴ This is all that is required of PHMSA. While the Administrative Procedure Act standard of review⁵ would apply in a legal challenge to the rule, the APA standard, contrary to the petitioners' assertions, affords agencies considerable deference in discretionary decisionmaking.⁶ In essence, the agency must merely engage in reasoned decisionmaking.⁷ This deference is particularly high when it comes to an agency's expertise in making judgments based on scientific and technical determinations,⁸ as is the case here.

As such, the Pipeline Safety Trust urges PHMSA to move forward with promulgating the rule and to reject the industry's delay tactics. Thank you for your consideration. If you have any questions about my comment or wish to discuss, feel free to contact me at erin@pstrust.org or (360) 543-5686 (x107) to arrange a meeting.

Sincerely,


Erin Sutherland
Policy Counsel
Pipeline Safety Trust

² INGAA-API, *Petition for Reconsideration* at 4 (citing 49 U.S.C. § 60115(c)).

³ 49 U.S.C. § 60115(c)(2).

⁴ *Id.*

⁵ 5 U.S.C. § 706(2).

⁶ *Motor Vehicle Mfrs. Ass'n v. State Farm Auto Mut. Ins. Co.*, 463 U.S. 29, 43 (1983) (explaining that the scope of this review is "narrow," and that courts should not "substitute its judgment for that of the agency.")

⁷ *Id.* at

⁸ *Balt. Gas & Elec. Co. v. Natural Resources Defense Council*, 462 U.S. 87, 103 (1983).