Pipeline Safety TRUST

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September 8, 2025

Ben Kochman, Acting Administrator
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Re: Comment of the Pipeline Safety Trust re Notice of Comment period on Final Rule, Pipeline Safety: Clarifying Recordkeeping Requirements for Testing in MAOP Reconfirmation Regulation (Docket No. PHMSA-2025-0117)

Dear Mr. Kochman:

Pipeline Safety Trust,[1] a non-profit watchdog organization of the pipeline industry and its regulators, has prepared the comments below in response to the Pipeline and Hazardous Materials Safety Administration's (PHMSA's) Notice of Comment Period on its Final Rule, Pipeline Safety: Clarifying Recordkeeping Requirements for Testing in MAOP Reconfirmation Regulation. On July 31, 2025, PST submitted a petition for reconsideration of the Final Rule, arguing that PHMSA's characterization that the rule as a "technical correction," and therefore exempt from the basic notice and comment requirements of the Administrative Procedure Act (APA), was inappropriate. PST also argued that PHMSA's factual, legal, and technical basis for the rule were flawed. PST has yet to receive a response to its reconsideration petition. Instead, PHMSA has opened a comment period on the "technical correction" and PST's petition for reconsideration.

While PST appreciates the opportunity to provide public comment, PHMSA's opening of this docket does not remedy our concerns on this rulemaking. The APA requires notice and comment[2] to ensure that changes to agency rules are subject to public scrutiny. This procedure is an integral part of the rulemaking process. Post hoc comment opportunities turn notice and comment rulemaking on its head and deprive stakeholders of their procedural rights and are thus an unacceptable remedy for an agency's failure.[3] This is

[1] Pipeline Safety Trust is a nonprofit, watchdog organization dedicated to 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.
[2] 5 U.S.C. § 553.
[3] U.S. Steel Corp. v. E.P.A., 649 F.2d 572 (8th Cir. 1981) (EPA could not "rebut the presumption that post hoc comment was not contemplated by the APA and is generally not consonant with it").

especially true here, where PHMSA has erroneously characterized its action as a "technical correction" to unlawfully circumvent the rulemaking process and has provided an unlawful basis for the rule. That procedural defect is not minor; it goes directly to whether PHMSA has met its obligation to engage in reasoned decisionmaking. Agencies must demonstrate a "rational connection between the facts found and the choice made."[4] If an agency action "fail[s] to consider an important aspect of the problem, [or] offer[s] an explanation for its decision that runs counter to the evidence before the agency" it is arbitrary and capricious and in violation of the APA.[5] PHMSA's basis for the "correction," as described in the Federal Register notice fails on these aspects, as described in PST's petition,[6] and is therefore procedurally defective, substantively unsupported, and unlawful under the APA.

Thank you for the opportunity to provide feedback to PHMSA. As mentioned in its petition for consideration, it is PST's position that PHMSA should:

1. Reconsider the technical correction to § 192.624(a)(1) and its interaction with the nonapplication and general applicability provisions.
2. Comply with rulemaking procedures found in the Administrative Procedure Act for this and all future agency decisions.
3. Clarify the distinctions between pipelines operating under the grandfather clause at § 192.619(c)(1) and those operating with incomplete or inadequate pressure test records.
4. Maintain alignment of the regulations with the 2011 Pipeline Safety Act.
5. Stay the effective date of the rule in its entirety until this petition for reconsideration is fully resolved.

To clarify item (5), PST is seeking a stay of the "technical correction" rule, not the MAOP reconfirmation rule in its entirety. Thank you for the opportunity to provide feedback about the rule. If you have any questions or would like to discuss any of our comment, please contact me at erin@pstrust.org or (360) 543-5686.

Sincerely,

Erin Sutherland

Erin Sutherland
Policy & Program Director/Counsel

[4] Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).
[5] *Id.*
[6] See Section III.B.–D of PST's Petition for Reconsideration.