

May 29, 2024

Alan K. Mayberry, P.E.
Associate Administrator
Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

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

Dear Mr. Mayberry:

Pursuant to 49 C.F.R. § 190.335(a), the GPA Midstream Association and American Petroleum Institute (Petitioners) respectfully submit this petition for reconsideration of the final rule (the Final Rule) that the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) published in the *Federal Register* on April 29, 2024, in the above-captioned proceeding. The Final Rule incorporates numerous updated technical standards by reference into the pipeline safety regulations (PSR) in 49 C.F.R. Parts 192 and 195.

The Petitioners support the Agency’s action in issuing the Final Rule, but the June 28, 2024, effective date does not provide sufficient time for operators to incorporate certain technical standards into their programs. Specifically, requiring compliance with API Std 1104 “Welding of Pipelines and Related Facilities,” 21st Ed., incorporated at 49 C.F.R. §§ 192.7(b)(9) and 195.3(b)(20) and API Std 2350 “Overfill Prevention for Storage Tanks in Petroleum Facilities,” 5th Ed., incorporated at 49 C.F.R. § 195.3(b)(12), by June 28, 2024, will cause compliance issues and disrupt pipeline operations. The Petitioners respectfully request that PHMSA either defer the compliance date or provide operators with the discretion to comply with the currently incorporated or updated versions of API 1104 and API 2350 for a reasonable period of time beyond June 28, 2024.

The Petitioners appreciate PHMSA’s consideration of this Petition. Please do not hesitate to contact us if you have any questions or concerns.

Sincerely,



Matthew Hite
Senior Vice President of Government Affairs
GPA Midstream Association

A handwritten signature in blue ink, appearing to read 'Dave Murk', with a stylized, looping flourish at the end.

Dave Murk
Senior Director, Pipelines
Midstream and Industry Operations
American Petroleum Institute

**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**

**PETITION FOR RECONSIDERATION
OF
Final Rule, “Pipeline Safety: Periodic Updates of Regulatory References to Technical
Standards and Miscellaneous Amendments”
PHMSA-2016-0002
(April 29, 2024)**

**FILED BY
GPA Midstream Association and American Petroleum Institute**

May 29, 2024

I. INTRODUCTION

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).¹ The Final Rule incorporates updated editions of a number of technical standards into the pipeline safety regulations (PSR) in 49 C.F.R. Parts 192 and 195.

Pursuant to 49 C.F.R. § 190.335(a), the GPA Midstream Association and American Petroleum Institute (Petitioners) respectfully request that the Agency reconsider the effective date for two of the revised standards, API Std 1104 “Welding of Pipelines and Related Facilities,” 21st Ed. (API 1104), incorporated at 49 C.F.R. 192.7(b)(9) and 195.3(b)(20) and API 2350 “Overfill Prevention for Storage Tanks in Petroleum Facilities,” 5th Ed. (API Std 2350), incorporated at 49 C.F.R. § 195.3(b)(12). The Final Rule’s effective date of June 28, 2024, does not provide operators sufficient time to stand up the necessary programs and qualify personnel without causing compliance issues and disrupting current pipeline operations. The Petitioners therefore request that PHMSA either defer the compliance date or provide operators with the discretion to comply with the currently incorporated or updated versions of API 1104 and API 2350 for a reasonable period of time beyond June 28, 2024.

II. RELIEF REQUESTED

- a. *PHMSA should defer the compliance date for API Std 2350 or allow pipeline operators to comply with the currently incorporated or updated version of that standard for a reasonable period of time.*

For the Final Rule, PHMSA established a single effective and compliance date, June 28, 2024, for each updated standard. This approach paints with too broad a brush and fails to consider the significant impacts of quickly updating certain standards, such as API 2350, will have on operators’ efforts to comply with the updated standard and pipeline operations. PHMSA should defer the compliance date or allow operators to comply with the currently incorporated or updated version of API 2350 for a reasonable amount of time beyond June 28, 2024. This is necessary to permit operators to smoothly transition to the revised API 2350 and is reasonable, practicable, and in the public interest.

Commenters explained that the 5th Edition of API 2350 is a major rewrite of the previously incorporated 3rd Edition² and, depending on the operator, may require significant changes to operators’ programs. At the joint Liquid and Gas Pipeline Advisory Committee (Advisory

¹ Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments, 89 Fed. Reg. 33,264 (Apr. 29, 2024) (hereinafter, “the Final Rule”).

² American Fuel & Petrochemical Manufacturers’ Comments at 5, Docket No. PHMSA-2016-0002-0006 (March 16, 2021), <https://www.regulations.gov/comment/PHMSA-2016-0002-0006>.

Committee) meeting which reviewed the Final Rule, members of the public stressed the need for a longer implementation period in order to comply with the updated standard.³

PHMSA responded to the public comment and stated PHMSA would “make sure that the effective date is reasonable.”⁴ However, in the Final Rule, PHMSA declined to extend the compliance deadline for API RP 2350, citing three factors (1) the length of time between the Advisory Committee meeting and the publication of the final rule; (2) that responsible operators would have already implemented the revised API 2350, an industry-created standard, and (3) that the updated standard will only apply to new, replaced, or otherwise changed overfill prevention systems.⁵

The Agency’s justification does not satisfy the Administrative Procedure Act’s notice-and-comment requirements. In a recently decided case, *Window Covering Manufacturers Ass’n v. Consumer Product Safety Commission*, the D.C. Circuit rejected 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.⁶ 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.”⁷

Here, two of PHMSA’s three stated justifications for the 60-day compliance deadline, the length of time between the Advisory Committee meeting and final publication and operators voluntarily complying with an industry standard, rely on operators working on compliance towards the rule prior to its effective date. This is counter to *Window Covering Manufacturers* and violates the APA. PHMSA’s third reason, that the updated standard only applies to new, replaced, or otherwise changed overfill prevention systems, cannot alone justify the 60-day compliance period. Operators are currently engaged in projects that involve new, replaced, or otherwise changed facilities. A 60-day window does not provide sufficient time to transition to the revised standard and keep day-to-day operations functioning smoothly. Operators need more time after the effective date of the rule to determine how to effectively transition between the previous and revised standard, update personnel training, and revise practices.

To remedy PHMSA’s arbitrary compliance deadline and provide sufficient time to implement the updated standard, the Agency must either defer the compliance date or provide operators with the discretion to comply with either the currently incorporated or updated version of API 2350 for a reasonable amount of time beyond June 28, 2024.

³ Liquid and Gas Pipeline Advisory Committee Transcript at 93:3-11 (Oct. 21, 2021), https://primis-meetings.phmsa.dot.gov/archive/Trancript_for_10-21-2021_Joint_PAC_meeting.pdf.

⁴ *Id.* at 93:15-20.

⁵ Final Rule, 89 Fed. Reg. at 33,269.

⁶ *Window Covering Manufacturers Ass’n v. Consumer Product Safety Comm’n*, 82 F.4th 1273, 1292 (D.C. Cir. 2023).

⁷ *Id.*

- b. *PHMSA should amend the compliance date for API Std 1104 or allow pipeline operators to comply with the currently incorporated or updated version of that standard for a reasonable period of time.*

Similarly, additional time is needed to transition and reasonably comply with the updated version of API 1104. During the rulemaking process, PHMSA and commenters did not address the difficulties operators will have transitioning to the revised edition of API 1104. Compliance with the revised API 1104 within the 60-day time frame is not practicable, is unreasonable, and is not in the public interest.⁸

The Petitioners' members are currently engaged in certain projects that require compliance with API 1104. Under the Final Rule's June 28, 2024, effective date, the Petitioners' members do not have sufficient time to transition to a program compliant with the newly incorporated 21st Edition without forcing the Petitioners' members to either halt work on their projects and disrupt important day-to-day operations or risk non-compliance with the updated standard. The Petitioners' members must update procedures and forms, train and qualify relevant personnel, and build the necessary administrative structure to implement a welding program compliant with the revised standard. This is a time-intensive process, and a 60-day compliance timeframe is not practicable or reasonable considering the efforts an operator must take to comply and the impacts compliance will have on operations. To avoid causing unnecessary operational disruptions, the Petitioners request that PHMSA either extend the compliance date or allow pipeline operators to comply with the currently incorporated or updated version of API 1104 for a reasonable period of time.

The Petitioners' request is in the public interest, because PHMSA has already determined that the currently incorporated 20th Edition of API 1104 is protective of public safety. PHMSA incorporated the 20th Edition of API 1104 in 2009.⁹ The 20th Edition has been the incorporated version of the standard for over a decade and has successfully safeguarded the public and the environment. Additionally, when incorporating the 21st Edition, PHMSA noted that the revised standard loosened certain requirements, but compensated for the loosened requirements by strengthening requirements elsewhere.¹⁰ PHMSA's comments imply that the 20th and 21st Editions of 1104 provide an equivalent level of safety, therefore permitting operators to continue relying on the 20th Edition for an additional period will not lessen public safety. In fact, a later compliance date will benefit the public by not disrupting pipeline operations. Finally, the Petitioners' request does not seek to delay compliance with every revised standard in the Final Rule or the withdrawal of the 21st Edition from the pipeline safety regulations. The Petitioners only seek limited relief to allow for a smooth transition to the revised standard.

For establishing an appropriate compliance date, the Petitioners stress that PHMSA must follow the holding in *Window Covering Manufacturers*, which does not permit PHMSA to consider an operator's voluntary compliance with a non-incorporated standard or the time between the publication of a proposed and final rule to determine a compliance date. PHMSA must start its

⁸ 49 C.F.R. § 190.335.

⁹ Pipeline Safety: Incorporation by Reference Update: American Petroleum Institute (API) Standards 5L and 1104, 74 Fed. Reg. 17,099 (April 14, 2009).

¹⁰ 89 Fed. Reg. at 33,277.

consideration of a reasonable compliance timeframe from the publication of the final rule.¹¹ To allow for an orderly transition to the revised API 1104, the Petitioners request that PHMSA either defer the compliance date or provide pipeline operators with the discretion to comply with either the currently incorporated or updated version of API 1104 for a reasonable period of time.

III. Conclusion

For the foregoing reasons, the Petitioners respectfully request that the Agency grant the petition and provide appropriate relief from the compliance dates for API 1104 and 2350 in the Final Rule.

Respectfully Submitted,



Matthew Hite
Senior Vice President of Government Affairs
GPA Midstream Association



Dave Murk
Senior Director, Pipelines
Midstream and Industry Operations
American Petroleum Institute

¹¹ *Window Covering Manufacturers Ass'n*, 82 F.4th at 1292.