U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

JUL 17 2009

Mr. Terry D. Boss
Senior V.P. of Environmental Safety and Operations
Interstate Natural Gas Association of America
10 G Street, N.E., Suite 700
Washington, DC 20002

Dear Mr. Boss:

In a letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA) dated March 20, 2009, you requested that PHMSA interpret the statutory seven-year gas pipeline integrity reassessment interval to allow reassessments to be conducted every seven calendar years not to exceed 90 months. You expressed your view that the current requirement to conduct reassessments seven actual years from the anniversary date of a segment's last assessment did not provide adequate flexibility to pipeline operators in the event of unanticipated developments and seasonal considerations.

Under 49 U.S.C. 60109(c)(3)(B), gas pipeline operators are required to periodically reassess the integrity of pipeline facilities covered by their integrity management programs "at a minimum of once every 7 years...". The implementing regulations at 49 CFR § 192.939(a) require that reassessments and alternative methods of reassessments such as confirmatory direct assessments be conducted within the seven-year period after the previous assessment of a covered segment. This requirement is also reflected in a Frequently Asked Question available on PHMSA's website reprinted as FAQ 41 below:

FAQ 41

Question: Does the requirement that an operator establish inspection intervals not to exceed a specified number of years mean calendar years (i.e., pipe assessed in 2004 must be re-assessed during 2011) or actual years?

Answer: Re-assessments must be conducted within the specified number of actual years. For example, a pipe segment assessed on March 23, 2004, must be re-assessed before March 23, 2011, using at least confirmatory direct assessment. This segment would need to be re-assessed using one of the methods specified in the rule before March 23, 2014, March 23, 2019, or March 23, 2024, depending on its operating stress (see § 192.939).

Therefore, the current requirement is seven actual years from the anniversary date of the last assessment of a covered segment.

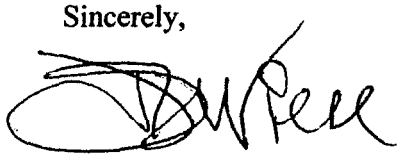
In your letter, you contend that it would have been permissible under the statute for PHMSA to adopt a requirement of seven calendar years not to exceed 90 months as you have proposed rather than the seven actual year requirement given Congress' intent and the legislative context and history. You also point out that a number of other inspection intervals established by PHMSA in Part 192 provide for additional flexibility in the interval.

In implementing the statute, PHMSA adopted the seven actual year requirement and did so by formal rulemaking. Therefore, a change from the current seven actual year requirement to the seven calendar years not to exceed 90 months approach you are advocating would also have to be done by rulemaking and cannot be accomplished by "re-interpretation." The other intervals you point out were all established by rulemaking, not by interpretation.

Accordingly, the seven actual year requirement must remain in place unless and until a regulatory proceeding to formally amend the rule is undertaken. At that time, PHMSA would invite comment on whether your approach is warranted in terms of safety and is consistent with the statute.

I hope that this information is helpful to you. If I can be of further assistance, please contact me at (202) 366-4046.

Sincerely,



Jeffrey D. Wiese
Associate Administrator for
Pipeline Safety

March 20, 2009

Jeffrey D. Wiese, Associate Administrator
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20590-0001

VIA FIRST CLASS AND ELECTRONIC MAIL

Re: Request for Reinterpretation: Required Reassessment Interval per 49 C.F.R. § 192.939

Dear Mr. Wiese:

Section 14(a) of the Pipeline Safety Improvement Act of 2002 ("Section 14(a)") established that integrity management reassessments must occur "at a minimum of once every 7 years."[1] Ambiguity in this provision prompted a question: Does the requirement mean calendar years, *i.e.*, that pipe segments receiving baseline assessments in 2004 would have to be re-assessed sometime in 2011; or, does the requirement mean actual years, *i.e.*, each facility would have to be re-assessed no later than seven years from the day of its baseline assessment. In Frequently Asked Question ("FAQ") 41, the Pipeline and Hazardous Materials Safety Administration ("PHMSA") interpreted the requirement to mean actual years:

> Reassessments must be conducted within the specified number of actual years. For example, a pipe segment assessed on March 23, 2004 must be re-assessed before March 23, 2011, using at least confirmatory direct assessment. This segment would need to be re-assessed using one of the methods specified in the rule before March 23, 2014, March 23, 2019 or March 23, 2024, depending on its operating stress.[2]

The "anniversary approach" reflected in FAQ 41 is one possible interpretation of Section 14(a). The better (more flexible) interpretation, the interpretation which harmonizes Section 14(a), recognized industry standards, operational requirements and PHMSA's own long-standing precedents, is a modified calendar approach.

For the reasons detailed below, the Interstate Natural Gas Association of America urges PHMSA to reinterpret Section 14(a) to mean that reassessments must be conducted every seven calendar years with intervals not exceeding seven and one-half years (90 months).

INGAA's suggested interpretation is statutorily permissible.

INGAA's suggested interpretation is not precluded by Section 14(a). In fact, INGAA's suggested interpretation is fully consistent with the statute's broader purposes and Congress's specific reservations about the proper length for the reassessment interval. Section 14(a) reflects a broader congressional mandate: establishing pipeline integrity management as a risk-based approach to improving pipeline safety. The legislative history does not shed light on why Congress chose seven years as the reassessment

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1 Pub. L. No. 107-355, 116 Stat. 2985, 3003 (2002) (codified at 49 U.S.C. § 60109(c)(3)(B)).

2 Available online at http://primis.phmsa.dot.gov/gasimp/FaqHome.gim?c=1. The response cites to 49 C.F.R. § 192.939.

interval, but elements of Section 14 suggest Congress was not wedded to defining the interval as seven years to the day.

A provision of Section 14(a) granted the Secretary of Transportation broad authority to waive the reassessment interval as long as pipeline safety was not compromised.[3] The statute specifically mentions waivers based on potential supply disruption or tool availability,[4] and these specific grounds appear in PHMSA's regulations;[5] however, the authorization granted in Section 14(a) is not limited to these cases, and the legislative history indicates waivers should be granted liberally:

> The Secretary is authorized to grant waivers and modifications pursuant to [49 U.S.C. § 60118(c)] for **any** requirement for reassessment of a facility for reasons that **may** include the need to maintain local product supply or the lack of internal inspection devices. The waivers or modifications shall not be inconsistent with pipeline safety. The Secretary is encouraged to make use of waivers and modifications where necessary and not inconsistent with purposes of pipeline safety, especially if local product supply maybe interrupted if a waiver or modification is not granted.[6]

If Congress intended a strictly enforced, seven-years-to-the-day reading of the reassessment requirement, it would not have granted the flexibility implicit in Section 14's relatively liberal waiver provision.

One can reasonably interpret the waiver provision as betraying congressional unease about the propriety of selecting seven years instead of some other reassessment interval. Such unease is further evidenced by Section 14(d) of the 2002 Pipeline Safety Act, which directed the Comptroller General to evaluate the seven year interval and issue a report.[7] The report concluded that the seven year interval was needlessly conservative, and the preferred course would be to adopt industry consensus standards that establish a range of reassessment periods (generally longer than seven years) based on a set of risk factors, technical data and engineering analyses.[8] INGAA is not mentioning this report to re-argue the merits of risk-based reassessment intervals. It is sufficient to note that Congress would not have requested this evaluation if it was certain that a seven year reassessment level was precisely right.[9]

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3 Pub. L. No. 107-355, 116 Stat. 2985, 3005 (2002) (codified at 49 U.S.C. § 60109(c)(5)).

4 *Id.*

5 49 C.F.R. § 192.943(a)(1), (2).

6 H.R. Rep. No. 107-605, pt. 2, at 27-28 (2002) (emphasis supplied).

7 Pub. L. No. 107-355, 116 Stat. 2985, 3005 (2002).

8 Government Accountability Office, Pub. GAO-06-945, Natural Gas Pipeline Safety: Risk-Based Standards Should Allow Operators to Better Tailor Reassessments to Pipeline Threats 5-6 (Sep. 2006) ("GAO Reassessment Report"). The report notes that the Department of Transportation generally agreed with these findings. *Id.* at 6.

9 It could also be argued that when Congress adopted Section 14 it was not writing on a clean slate. As detailed later in this letter, by 2002 PHMSA's predecessors had adopted over 20 different natural gas regulations using flexible scheduling instead of rigid, recurring intervals. Viewed from this perspective, Congress could well have assumed PHMSA would apply similar flexibility to the seven year reassessment interval.

INGAA's suggested interpretation is operationally necessary.

The GAO Reassessment Report correctly noted that integrity assessments and reassessments are not spread evenly throughout the year:

> In early 2006, INGAA and [the American Gas Association ("AGA")] polled their members about their experiences with and plans for conducting assessments and reassessments during off-peak and peak months. Overall, INGAA and AGA found that, from 2003 to 2012, members plan to conduct 76 percent of their baseline assessments and reassessments on their gas transmission pipelines (measured in miles) during the off-peak spring and summer months, 18 percent in the fall, and 6 percent in the winter.[10]

FAQ 41's anniversary approach will force operators to schedule reassessments a month or two before a pipeline segment's anniversary date, simply to create a cushion that will ensure compliance in the event of unanticipated developments. For segments with anniversary dates early in the reassessment season there are only two ways to maintain this cushion: schedule the reassessment during the peak season or, more likely, schedule the reassessment close to a year early. Even segments with anniversary dates late in the off-peak season are only a few reassessment cycles away from this dilemma, as cushioning will tend to cause scheduled inspections to drift closer and closer to the beginning of the off-peak season.

Moreover, a strict anniversary approach gives operators no flexibility to schedule reassessment activities within a given off-peak season. Segments must be re-assessed in the order of their baseline assessments, even if developments during the intervening seven years would make a different order more efficient or preferable based on risk factors.

INGAA's suggested interpretation addresses these problems by giving operators the flexibility to schedule reassessments efficiently within a peak season. This approach enhances pipeline operations and avoids waiver requests that would otherwise impose regulatory costs on operators and PHMSA. These benefits would be achieved without compromising pipeline safety, as all pipeline segments would have to be reassessed within seven calendar years.

INGAA's suggested interpretation not only accords with industry standards, it exceeds them.

As noted in the GAO report, the industry consensus standard for integrity reassessment is Standard ASME B31.8S-2004,[11] approved and issued by the American Society of Mechanical Engineers.[12] Under B31.8S, the generally applicable reassessment interval for pipelines operating above 50% of specified minimum yield strength is 10 years.[13]

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10 *Id.* at 34.

11 *Id.* at 14.

12 American Society of Mechanical Engineers, Pub. ASME B31.8S-2004, Managing System Integrity of Gas Pipelines (Jan. 2005) ("B312.8S").

13 *Id.* at 23, *Figure 4 - Timing for Scheduled Responses: Time-Dependent Threats, Prescriptive Integrity Management Plan* (Jan. 2005). This request for reinterpretation is not intended to apply to cases where a shorter reassessment period is warranted by the 22-point threat assessment detailed in B31.8S section 2, which is incorporated into PHMSA's regulations. 49 C.F.R. § 192.7(c)(2)(D)(5) (incorporating B312.8S by reference); 49 C.F.R. § 192.917(a) (imposing B31.8S section 2 as substantive regulation).

Under INGAA's suggested interpretation, the maximum reassessment interval would be seven and one half years,[14] still far more conservative than B31.8S.

INGAA's suggested interpretation is in line with long-standing PHMSA precedent.

Over 30 years ago, PHMSA's predecessor recognized that rigid compliance schedules do not sufficiently allow operators sufficient operational flexibility.[15] The agency responded by amending a series of Part 192 regulations to redefine rigid compliance schedules more flexibly:

Regulation (49 C.F.R.)	Subject	Original Compliance Schedule	Amended Compliance Schedule
192.465(b)	Inspection of cathodic protection rectifiers	Inspect at intervals not exceeding two months.	Inspect six times annually at intervals not exceeding two and one-half months.
192.465(c)	Inspection of reverse current switches, diodes and interference bonds	Inspect at intervals not exceeding two months.	Inspect six times annually at intervals not exceeding two and one-half months.
192.477	Inspection of coupons or other means of monitoring internal corrosion	Inspect at intervals not exceeding six months.	Inspect twice annually at intervals not exceeding seven and one-half months.
192.481	Evaluation of offshore pipelines exposed to the atmosphere	Evaluate at intervals not exceeding one year.	Evaluate once each calendar year but with intervals not exceeding 15 months.

The agency expanded flexible compliance scheduling in 1982, noting the operational justification for this approach and confirming the absence of any reduction in pipeline safety:

> Petitioners . . . have argued that such recurring time intervals do not permit sufficient flexibility in scheduling personnel. They stated that the extremes of weather and unexpected delays in scheduled work unavoidably conflict with the specified intervals, but that restating the periodic requirements on a calendar year basis, with longer intervals, would provide the flexibility needed to schedule personnel to meet the requirements **without reducing public safety**.
>
> Experience shows that requirements for periodic action on a fixed recurring interval do not allow sufficient flexibility in scheduling personnel. However, minor modifications which extend the intervals without reducing the number of inspections, tests, or other activities that must be performed each year will allow operators more discretion in scheduling.[16]

As shown below, the 1982 amendments affected 18 substantive provisions within Part 192:

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14 Even this is an overstatement. Requiring reassessment every seven calendar years ensures that seven and one half year reassessments could not be stacked one on top of another.

15 *Corrosion Control Requirements*, 43 Fed. Reg. 39839 (1978).

16 *Transportation of Natural and Other Gas and Hazardous Liquids by Pipeline; Inspection and Test Intervals*, 47 Fed. Reg. 46850 (1982) (emphasis supplied).

Regulation (49 C.F.R.)	Subject	Original Compliance Schedule	Amended Compliance Schedule
192.227(d)(1)[a]	Welder requalification	Requalify every twelve months.	Requalify within the preceding 15 months, but at least once each calendar year.
192.227(d)(2)[b]	Welder qualification by destructive testing	Destructive test every six months.	Destructive test within the last seven and one-half months, but at least twice each calendar year.
192.705(b)	Patrolling: Class 1 and Class 2 – highway and railroad crossings	Patrol every six months.	Patrol within the last seven and one-half months, but at least twice each calendar year.
192.705(b)	Patrolling: Class 3 and Class 4 – highway and railroad crossings	Patrol every three months.	Patrol within the last four and one-half months, but at least four times each calendar year.
192.705(b)	Patrolling: Class 1 and Class 2 – general	Patrol every twelve months.	Patrol within the last 15 months, but at least once each calendar year.
192.705(b)	Patrolling: Class 3 – general	Patrol every six months.	Patrol within the last seven and one-half months, but at least twice each calendar year.
192.705(b)	Patrolling: Class 4 – general	Patrol every three months.	Patrol within the last four and one-half months, but at least four times each calendar year.
192.706	Leakage survey – general	Survey every twelve months.	Survey within the preceding 15 months, but at least once each calendar year.
192.706(a)	Leakage survey – no odorant in Class 3	Survey every six months.	Survey within the last seven and one-half months, but at least twice each calendar year.
192.706(b)	Leakage survey – no odorant in Class 4	Survey every three months.	Survey within the last four and one-half months, but at least four times each calendar year.
192.721(b)(1)[c]	Patrolling: distribution mains	Patrol every three months.	Patrol within the last four and one-half months, but at least four times each calendar year.
192.723(b)(1)	Leakage survey – distribution systems	Survey every twelve months.	Survey within the preceding 15 months, but at least once each calendar year.
192.731(c)	Inspection and testing: remote control shutdown devices	Inspect and test every twelve months.	Inspect and test within the preceding 15 months, but at least once each calendar year.
192.739	Inspection and testing: pressure limiting and regulating stations	Inspect and test every twelve months.	Inspect and test within the preceding 15 months, but at least once each calendar year.

Regulation (49 C.F.R.)	Subject	Original Compliance Schedule	Amended Compliance Schedule
192.743	Testing: relief devices	Test every twelve months.	Test within the preceding 15 months, but at least once each calendar year.
192.745	Inspection and operation: transmission line valves	Inspect and operate every twelve months.	Inspect and operate within the preceding 15 months, but at least once each calendar year.
192.747	Inspection and servicing: distribution line valves	Inspect and service every twelve months.	Inspect and service within the preceding 15 months, but at least once each calendar year.
192.749(a)	Inspection: vaults housing pressure regulating or limiting equipment	Inspect and service every twelve months.	Inspect and service within the preceding 15 months, but at least once each calendar year.

[a] Originally 192.227(c)(1).
[b] Originally 192.227(c)(2).
[c] Originally 192.721(b).

Finally, in the closely analogous area of external corrosion control, PHMSA regulations call for re-evaluations "not less than every 3 years at intervals not exceeding 39 months."[17]

INGAA asks only that PHMSA take the regulatory philosophy it adopted in all of these other contexts and apply it to integrity assessment.[18]

Please contact me, tboss@ingaa.org or (202) 216-5930, if you have any questions.

Respectfully submitted,

Terry D. Boss
Senior Vice President of
Environment, Safety and Operations
Dan Regan
Regulatory Attorney
Interstate Natural Gas Association of America
10 G Street, N.W., Suite 700
Washington, DC 20002
(202) 216-5900

17 49 C.F.R. § 192.465(e).

18 By some measures, the flexibility INGAA is requesting today is far more modest than that granted in these other regulations. Consider the change associated with amending a regulation so a task that used to be performed every three months can now be performed at intervals not exceeding four and one half months, but at least four times per year. The maximum departure from the original schedule is 50% (three months vs. four and one-half months). This letter is requesting a change from seven years to at most seven and one-half years, a maximum departure of less than 8%.

cc: James M. Pates
Assistant Chief Counsel
Pipeline Safety Law Division
Bill Gute
Deputy Associate Administrator