



Submitted via regulations.gov

December 5, 2022

David P. Pecoske
Administrator
Transportation Security Administration
c/o U.S. Department of Transportation
Docket Management Facility (M-30)
1200 New Jersey Avenue SE
West Building Ground
Floor, Room W12-140
Washington, DC 20590-0001

**Re: Request for an Extension of the Comment Period
Enhancing Surface Cyber Risk Management, Docket No. TSA-2022-0001,
RIN 1652-AA74, 87 Fed. Reg. 73527 (November 30, 2022)**

Dear Mr. Pecoske:

The American Gas Association (“AGA”), Interstate Natural Gas Association (“INGAA”), American Fuel & Petrochemical Manufacturers (“AFPM”), American Public Gas Association (“APGA”), American Petroleum Institute (“API”), Liquid Energy Pipeline Association (“LEPA”), the Association of American Railroads (“AAR”), and the American Short Line and Regional Railroad Association (“ASLRRA”) (collectively, “Joint Requesters”) respectfully request that the Transportation Security Administration (“TSA”), Department of Homeland Security (“DHS”), extend the public comment period by 30 days in the above-referenced proceeding. The advance notice of proposed rulemaking (“ANPRM”)¹ is an important step in the regulatory process and seeks input on multiple matters, all of which require careful consideration in order to develop meaningful stakeholder comments. As discussed herein, additional time to provide comments in response to the ANPRM is justified.

The included pipeline trade associations represent almost all aspects of U.S. energy pipeline operations that serve customers reliably across North America. The associations’ members represent refineries and petrochemical operators -- through which pipelines receive and distribute products, regional and local natural gas distribution pipelines, liquids pipelines, integrated and midstream natural gas and oil companies, operators of municipal natural gas systems, natural gas transmission pipelines, and natural gas product pipelines and processors.

¹ *Enhancing Surface Cyber Risk Management*, RIN 1652-AA74, 87 Fed. Reg. 73527 (November 30, 2022).

Equally as significant, the included rail trade associations represent almost all aspects of the nation's railroads. Together, their respective memberships comprise major freight railroads that operate 83 percent of the line-haul mileage, regional and short line carriers that operate on 50,000 miles of track in 49 states, Amtrak, and several commuter railroads.

Joint Requesters appreciate TSA's ongoing efforts to strengthen cybersecurity and resiliency across the pipeline and rail sectors. Joint Requesters have a direct interest in this proceeding, making them critical stakeholders. Unfortunately, TSA has not provided sufficient time for stakeholders to review and analyze the lengthy ANPRM to develop meaningful comments.

On November 30, 2022, TSA published in the Federal Register the ANPRM seeking input regarding ways to strengthen cybersecurity and resiliency in the pipeline and rail sectors. The ANPRM sets forth critical questions to help TSA develop a comprehensive and forward-looking approach to cybersecurity requirements, and carefully consider the appropriate next step. Specifically, the ANPRM seeks input on six broad categories² and includes scores of questions for stakeholders to provide feedback.³ TSA provided stakeholders only 45 days, or until January 17, 2023, to comment on the ANPRM and respond to the numerous questions. To sufficiently analyze the ANPRM, consider the questions posed by TSA on the complicated issues raised in the ANPRM, and provide the caliber of feedback TSA seeks, an additional 30 days is required. In order for TSA to make any determinations such as a rulemaking or appropriate next steps, it should provide stakeholders with sufficient time to carefully respond to the ANPRM.

Furthermore, the public comment period for the ANPRM encompasses a winter period when many stakeholders are away from work for the holiday season. Specifically, the specified 45-day comment period encompasses three federal holidays.⁴ This will make it difficult to develop meaningful comments in response to the ANPRM.

While the Administrative Procedure Act ("APA") does not establish a minimum comment period for rulemakings, courts require that agencies provide a "meaningful" opportunity for comment.⁵ In short, "[t]he opportunity for comment must be a meaningful opportunity" and "in order to satisfy this requirement, an agency must also remain sufficiently open-minded."⁶ As discussed herein, additional time is needed to meaningfully analyze and respond to the ANPRM.

Given these factors impacting stakeholders' ability to develop meaningful comments in the allotted time, TSA should extend the comment period by an additional 30 days. An extension will permit stakeholders to develop meaningful comments on the complex and important issues addressed by the ANPRM, and aid TSA in developing a sufficient record in this proceeding. Furthermore, providing a 30-day extension for comments in this proceeding will not cause a significant delay in TSA's consideration of the record and any next steps.

² See ANPRM at Sections III B, C, D, E, F, and G.

³ See ANPRM Questions B1 to B6; C1 to C6; D1 to D25; E1 to E3; F1 to F3; and G1 to G3 (including various subparts).

⁴ Christmas Day, New Year's Day, and Birthday of Martin Luther King, Jr.

⁵ See, e.g., *Rural Cellular Ass'n v. Fed. Commc'ns Comm'n*, 588 F.3d 1095, 1101 (D.C. Cir. 2009), *Gerber v. Norton*, 294 F.3d 173, 179 (D.C. Cir. 2002).

⁶ *Rural Cellular Ass'n*, 588 F.3d at 1101.

Joint Requesters and our members are committed to supporting efforts to build pipeline and rail cybersecurity capability. We thank you for the review and consideration of this letter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K Denbow', is written over a horizontal line.

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For the Joint Requesters