

INSIGHTS

Underground Natural Gas Storage: Regulations and Fees Move Forward Despite Appeal and Criticism

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Last December, PHMSA issued an [interim final rule](#) (IFR) to establish—for the first time ever—minimum federal standards for underground natural gas storage facilities. The IFR imposes significant new requirements in a short timeframe for “downhole facilities,” including wells, wellbore tubing and casings at underground natural gas storage facilities. Those rules became effective in late January and most recently, PHMSA finalized [user fees](#) to fund a training program for inspectors with oversight of underground storage facilities and other guidance materials. While PHMSA moves forward in regulating these facilities, the State of Texas, INGAA, and AGA have challenged the rule and commenters have criticized the rule as rushed, poorly drafted, and unrealistic.

Background

The rule was prompted by the October 2015 Southern California Gas Company’s Aliso Canyon leak, which led to an [interagency task force](#) to study federal regulations of these facilities and a [statutory mandate](#) that PHMSA establish minimum federal standards. The IFR addresses construction, maintenance, risk management, and integrity management procedures for these facilities. It also incorporates the requirements of recent API industry recommended practices (RPs) 1170 for salt caverns storing natural gas and 1171 for storage in depleted hydrocarbon reservoirs and aquifer reservoirs as *mandatory* requirements (many are simply recommendations for operators to consider). In addition, the rules require underground gas storage operators to prepare and file annual reports, incident reports, safety-related condition repairs, and to register their facilities in the PHMSA operator registry. Under the rules, all intrastate transportation-related underground gas storage facilities will become subject to minimum federal safety standards and be inspected either by PHMSA or by a state entity that has expanded its authority to regulate these facilities under a certification filed with PHMSA pursuant to 49 U.S.C. § 60105.

There are an estimated 400 underground natural gas facilities across more than 30 states, 80% of which store gas in depleted oil and gas fields, while the remaining 20% store gas in aquifers and salt caverns. Each storage facility typically has dozens, if not hundreds, of injection/storage wells. As finalized, PHMSA’s user fees are based on working gas capacity as opposed to the number of wells due to a lack of reliable data and includes inactive storage fields (because they could be returned to service).

Appeals and Industry Criticism

The state of Texas and the Texas Railroad Commission (TRRC) **petitioned** the Fifth Circuit Court of Appeals to set aside the PHMSA rulemaking, claiming it is arbitrary, capricious, an abuse of agency discretion, or is otherwise not in accordance with law. Texas Attorney General Ken Paxton **explained** that the IFR “effectively stripped the states of authority over their own natural gas facilities and completely disregarded traditional state regulatory roles.” The TRRC regulates intrastate hazardous liquid and natural gas pipeline safety in Texas and it has, in the absence of federal regulations, regulated underground gas storage sites in the State since the 1950s. According to the EIA, Texas has the third largest inventory of underground natural gas storage in the U.S.

INGAA and AGA also challenged the IFR in the D.C. Circuit Court of Appeals. The Court has consolidated those challenges. INGAA and AGA alleged that the IFR is arbitrary, capricious, an abuse of discretion, not a product of reasoned decision-making, or otherwise not in accordance with the law because its one-year compliance timeline is impracticable, and PHMSA inappropriately transformed API RP 1170 and 1171 from discretionary guidelines to mandatory requirements. They also objected to the IFR’s procedure for requiring a showing that an action is “unreasonable *and* not necessary for safety” to obtain a variance from the mandatory RPs.

PHMSA received many comments from operators and industry trade groups, among others, on the IFR. TRRC’s **comments** were critical of PHMSA, noting that “[t]he lack of planning in the rushed implementation of this rule is alarming.” The comments raise concerns, among others, with respect to: (1) PHMSA’s lack of experience to safely and fully implement the final rule and for “embarking on a path of regulating an industry with which it has little familiarity;” and (2) issuing a rule without an established procedure for a state to obtain delegated authority. Industry trade groups INGAA, API and AGA were also critical of the Agency’s view that adoption of the API RPs as mandatory. In addition, INGAA expressed concerns that the 12 month compliance timeframe is “**unrealistic**,” contrasting it to the 10-year implementation period for the gas transmission integrity management rulemaking.

IFR Implementation

The incident, safety-related condition reporting, and operator registration requirements became effective on January 18, 2017, with the first annual report due by July 18, 2017. PHMSA and its state partners certified to regulate intrastate pipeline facilities will monitor rule implementation, and once the 49 C.F.R. § 192.12 inspection requirements become effective on January 18, 2018, PHMSA will begin inspecting and enforcing these requirements. We understand that former PHMSA Eastern Region Director Byron Coy will be leaving his post to lead the Agency’s Underground Natural Gas Storage program.

The timeframe for issuance of a final rule, which may include modifications to the IFR regulations, is unclear. Further, issuance of a final rule as well as the effectiveness of the IFR may be impacted by the current legal challenge and current Presidential Administration’s preferences for states to take the lead with regulations and emphasis on reducing duplicative administrative regulations.