

INSIGHTS

## PHMSA to Reassess Underground Natural Gas Storage Rule

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By: [Catherine D. Little](#), [Annie Cook](#) and [Mandi Moroz](#)

On December 19, 2016, PHMSA issued an [interim final rule](#) (IFR) to establish for the first time minimum federal safety standards for underground natural gas storage facilities. The rule was issued in response to the 2015 Aliso Canyon storage leak that lasted almost four months, and a subsequent Congressional mandate to issue federal standards for underground storage. Among other things, the IFR incorporated by reference (thereby making them mandatory) two American Petroleum Institute (API) Recommended Practices (RPs) regarding underground natural gas storage in salt caverns and reservoirs: (1) API RP 1170, "Design and Operation of Solution-mined Salt Caverns Used for Natural Gas Storage," (July 2015); and (2) API RP 1171, "Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Aquifer Reservoirs," (Sept. 2015). API finalized both of those RPs in response to the Aliso Canyon incident.

The rule became effective on January 18, 2017, the same day in which the American Gas Association (AGA), API, the American Public Gas Association, and the Interstate Natural Gas Association (INGAA) (collectively "the industry groups") [petitioned](#) PHMSA to reconsider the IFR because, among other things, it made mandatory many of the RPs' recommendations that were previously voluntary. The industry groups also contended that the IFR's implementation periods were impracticable and requested that PHMSA extend them. INGAA withdrew from the petition on April 17, 2017 in order to pursue a parallel challenge in federal court.

On June 20, 2017, PHMSA published a Federal Register [Notice](#) stating that it will address the issues raised by the industry groups' petition, as well as issues raised in other comments it receives, in a final rule that it expects to publish by January 2018. While PHMSA's policy is to act on a petition for reconsideration within ninety days of a final rule's Federal Register publication, the Agency found it impracticable to respond to the industry groups' petition within that time period, which is somewhat ironic since one of industry's concerns was the impracticable time frames in the IFR.

Notably, the June 20 Notice stays enforcement against operators for failing to meet any of the non-mandatory RP provisions that the IFR converted to mandatory provisions. PHMSA will not enforce those provisions for one year after publishing the new final rule. The Agency, however, reserves the right to exercise its enforcement authority to address emergencies presenting imminent hazards "or specific conditions that are or would be hazardous to life, property, or the environment."

The Notice also states that PHMSA intends to retain and enforce other IFR compliance deadlines, such as the requirement that operators of existing underground gas storage facilities develop procedures to implement the RPs sections that are identified as mandatory in the RPs by January 18, 2018. The Notice further informs operators that [informal guidance](#), in the form of Frequently Asked Questions, is available to assist operators to develop RP assessment schedules and to carry out compliance programs.

PHMSA is also in the process of responding to legal challenges to the IFR filed in the D.C. Circuit by AGA and INGAA and in the Fifth Circuit Court of Appeals by the State of Texas and the Texas Railroad Commission. Both AGA and INGAA subsequently joined the Fifth Circuit challenge as intervenors on the petitioners' behalf. The D.C. and Fifth Circuit petitions both request that the Court set aside the rule because it is arbitrary, capricious, an abuse of discretion and not otherwise in accordance with law.

These cases are likely to be consolidated and shape PHMSA's January 2018 final rule. In the Fifth Circuit challenge, petitioners' brief is due on July 27, 2017. In the D.C. Circuit, DOT has filed a motion to dismiss for lack of jurisdiction, arguing that the petition for review is premature because AGA and INGAA's petition for reconsideration is currently pending before PHMSA. The D.C. Circuit has not yet acted on DOT's motion to dismiss.