(b) NHTSA stated in a 2005 FMVSS No. 101 rulemaking that the reason for including vehicles over 10,000 pounds in the requirements of FMVSS No. 101 is that there is a need for drivers of heavier vehicles to see and identify their displays, just as there is for drivers of lighter vehicles. See 70 FR 48295, 48298 (Aug. 17, 2005). The telltale in the subject vehicles saying "BRAKE" would allow the driver to see and identify the improper functioning system as was the intent of the rule, thus serving the purpose of the FMVSS No. 101 requirement.

(c) There are two scenarios when a low brake air pressure condition would exist: A parked vehicle and a moving vehicle. Each of these are discussed separately below; in each scenario, there is ample warning provided to the driver of low brake air pressure.

a. Parked Vehicle

The driver of an air-braked vehicle must ensure that the vehicle has enough brake air pressure to operate safely. At startup, the vehicle will likely be in a low air condition. When in a low air condition the following warnings would occur, conditioning the driver over time as to the purpose of the telltale and audible alerts and under what conditions they are activated.

- Red contrasting color of the telltale saying "BRAKE".
- Red contrasting color of the ISO symbol for brake malfunction.
- Audible alert to the driver as long as the vehicle has low air.
- Air gauges for the primary and secondary air tanks clearly showing the air pressure in the system.
- Red contrasting color on the air gauges indicating when the pressure is low.
- Difficulty/inability of releasing the parking brakes with low air.
- Reduced drivability if the driver attempts to drive with the parking brakes applied.

b. Moving Vehicle

If a low brake air pressure situation occurs while driving, the function of the service brakes may be reduced or lost and, eventually if the pressure gets low enough, the parking brakes will engage. The driver must pull to the side of the road and apply the parking brakes as soon as possible. A loss of brake air pressure while driving represents a malfunctioning brake system and requires immediate action from the driver. Drivers recognize that a telltale illuminated in red represents a malfunction which needs to be remedied.

The following warning would occur if a low air condition occurred while driving.

- Red contrasting color of the telltale saying "BRAKE".
- Red contrasting color of the ISO symbol for brake malfunction.
- Audible alert to the driver as long as the vehicle has low air.
- Air gauges for the primary and secondary air tanks clearly showing the air pressure in the system.
- Red contrasting color on the air gauges indicating when the pressure is low.

The functionality of both the parking brake system and the service brake system remains unaffected by the "BRAKE" telltale used in the subject vehicles.

(d) NHTSA Precedents—DTNA notes that NHTSA has previously granted petitions for decisions of inconsequential noncompliance for similar brake telltale issues, in which the ISO symbol in combination with other available warnings was deemed sufficient to provide the necessary driver warning. See Docket No. NHTSA–2012–0004, 78 FR 69931 (November 21, 2013) (grant of petition for Ford Motor Company) and Docket No. NHTSA–2014–0046, 79 FR 78559 (December 30, 2014) (grant of petition for Chrysler Group, LLC). In both of these instances, the vehicles at issue displayed an ISO symbol for the brake telltale instead of the wording required under FMVSS No. 101. The ISO symbol in combination with other available warnings was deemed sufficient to provide the necessary driver warning. DTNA respectfully suggests that the same is true for the subject vehicles: The ISO symbol, together with other warnings and alerts, are fully sufficient to warn the driver of a low brake air pressure situation.

DTNA concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that DTNA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after DTNA notified them that the subject noncompliance existed.


Jeffrey M. Giuseppe,
Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–26764 Filed 11–4–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0092]

Pipeline Safety: Underground Natural Gas Storage Facility User Fee

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of agency action and request for comment.

SUMMARY: This notice is to advise all underground natural gas storage facility operators of a proposed PHMSA pipeline user fee assessment and rate structure.

FOR FURTHER INFORMATION CONTACT: Roger Little by telephone at 202–366–4569, by fax at 202–366–4566, by email at Roger.Little@dot.gov, or by mail at U.S. Department of Transportation, PHMSA, 1200 New Jersey Avenue SE., PH–2, Washington, DC 20590–0001.

Comments: PHMSA invites interested persons to comment on the underground natural gas storage facility user fee assessment procedures described in this notice by January 6, 2017. Comments should reference Docket No. PHMSA–2016–0092. Comments may be submitted in the following ways:

- E-Gov Web site: http://www.regulations.gov. This site allows the public to enter comments on any Federal Register notice issued by any agency. Follow the instructions for submitting comments.
account the allocation of departmental
transportation establish a schedule of
pipeline safety activities conducted
requires that the Secretary of
Section 60301 of Title 49, United States
Reconciliation Act of 1986 (COBRA)
published April 11, 2000 (65 FR 19476), or visit
in the
Federal Register
privacy act statement below for additional
information.
privacy act statement
anyone may search the electronic
form of all comments received for any
of our dockets. you may review the
dot’s complete privacy act statement in the
Federal Register published April 11, 2000 (65 FR 19476), or visit
Supplementary information:
background
the consolidated omnibus budget
reconciliation act of 1986 (COBRA)
(Pub. L. 99–272, sec. 7005), codified at
Section 60301 of Title 49, United States
Code, authorizes the assessment and
Collection of user fees to fund the
pipeline safety activities conducted
under Chapter 601 of Title 49. COBRA
requires that the Secretary of
Transportation establish a schedule of
fees for pipeline usage, bearing a
reasonable relationship to miles of
pipeline, volume-miles, revenues, or an
appropriate combination thereof. in
particular, the Secretary must take into
account the allocation of departmental
resources in establishing the schedule.1
in accordance with COBRA, PHMSA
also assesses user fees on operators of
liquefied natural gas (LNG) facilities as
defined in 49 CFR part 193.
On June 22, 2016, President Obama
signed into law the protecting our
infrastructure of pipelines and
enhancing safety act of 2016 (Pub. L.
114–183) (PIPES act of 2016). Section
12 of the PIPES act of 2016 mandates
PHMSA to issue regulations for

1 Pipeline user fee assessments under COBRA were upheld by the U.S. Supreme Court in Skinner v. Mid-America Pipeline Co., 490 U.S. 212 (1989).

PHMSA will also directly regulate any
intrastate facilities. While the surface
piping at underground gas storage
facilities is currently subject to the 49
CFR part 192 regulations, extending
Federal regulation to the wells and well
bore tubing connecting the surface with the
underground reservoirs is a
regulatory activity not previously
conducted by PHMSA that will involve
substantial employment of agency
resources. This will include, among
other things, conducting field
inspections of facility operations
including reviewing operating
maintenance, integrity and emergency
plans and procedures, making
compliance determinations and
conducting enforcement actions, and
accident investigations. PHMSA
estimates $2 million of the potential
appropriation would fund the
preparations mentioned above and
direct PHMSA inspection and
enforcement. The remaining $6 million
of the proposed appropriation would
fund grants to State agencies certified
by PHMSA to regulate intrastate facilities.
PHMSA invites comments on the
following proposed approach to
determining the user fee assessment for
underground natural gas storage facility
operators. This is a tiered approach
that is similar to the liquefied natural gas
(LNG) plant user fee rate structure,
which was modified for FY 2015 billing.
The LNG user fee rate structure uses the
storage capacity, in barrels of LNG, as
the basis for the rate structure. The
storage capacity for each operator is
determined and operators are placed in
tiers. Each tier represents a greater
storage capacity and a higher user fee
obligation. The storage capacity of an
underground natural gas storage facility
is referred to as the working gas
capacity. PHMSA proposes to use the
working gas capacity, in million
standard cubic feet, for each operator,
and a tiered approach to establish the
underground natural gas storage facility
user fee structure. The tiered approach
places a larger portion of the user fee
assessment on operators of larger
facilities. PHMSA also considered using
the number of active wells per facility
as the basis for the tiers as it would also
be a reasonable indicator of the
expected regulatory efforts needed.
PHMSA has not found a publicly
available data source for the number of
active wells at each facility, but may
reassess the user fee rate structure in the
future if this or other methods become
feasible and are shown to appropriately
reflect the allocation of departmental
resources to these regulatory activities.
In the spring of 2017, PHMSA will
use calendar year 2015 data from the

1 Pipeline user fee assessments under COBRA were upheld by the U.S. Supreme Court in Skinner v. Mid-America Pipeline Co., 490 U.S. 212 (1989).
EIA Web site to develop the underground natural gas storage facility user fee rate structure. When PHMSA promulgates regulations for operators of underground natural gas storage facilities, we plan to include the collection of annual reports to incorporate both the capacity and number of wells per facility in the annual report. If PHMSA were to collect data directly from the operators, PHMSA would discontinue the use of EIA data.

PHMSA proposes the following steps for developing the user fee rate structure. PHMSA will sum the working gas capacity for active fields for each operator. The operator working gas capacity values will be parsed into 10 tiers. The lowest values will be in tier 1 and the highest values in tier 10. The minimum and maximum Working Gas Capacities for each tier will be selected to place an equal number of operators in each tier. Each tier will have a user fee assessment to be paid by each operator in the tier. Based on a preliminary analysis of the EIA data, the tiers and assessment per tier to collect $8,000,000 would be:

<table>
<thead>
<tr>
<th>Tier</th>
<th>Assessment per operator</th>
<th>Working gas capacity (Mcf) range</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$12,308</td>
<td>Less than 1,550,000.</td>
</tr>
<tr>
<td>2</td>
<td>24,615</td>
<td>More than 1,550,000 and less than 3,500,000.</td>
</tr>
<tr>
<td>3</td>
<td>30,769</td>
<td>More than 3,500,000 and less than 6,500,000.</td>
</tr>
<tr>
<td>4</td>
<td>36,923</td>
<td>More than 6,500,000 and less than 11,500,000.</td>
</tr>
<tr>
<td>5</td>
<td>49,231</td>
<td>More than 11,500,000 and less than 15,500,000.</td>
</tr>
<tr>
<td>6</td>
<td>61,338</td>
<td>More than 15,500,000 and less than 22,000,000.</td>
</tr>
<tr>
<td>7</td>
<td>73,846</td>
<td>More than 22,000,000 and less than 30,000,000.</td>
</tr>
<tr>
<td>8</td>
<td>80,000</td>
<td>More than 30,000,000 and less than 50,000,000.</td>
</tr>
<tr>
<td>9</td>
<td>92,308</td>
<td>More than 50,000,000 and less than 85,000,000.</td>
</tr>
<tr>
<td>10</td>
<td>142,857</td>
<td>More than 85,000,000.</td>
</tr>
</tbody>
</table>

If less than $8 million is appropriated to the Underground Natural Gas Storage Facility Safety Account, PHMSA will proportionally reduce the assessment for each tier to collect the appropriated amount. Regardless of the appropriated amount, PHMSA expects that 25% would fund PHMSA actions and 75% would fund grants to certified State agencies. PHMSA would continue this user fee assessment in each year funds are provided in advance in an appropriations act and these regulatory activities are carried out.

Issued in Washington, DC, on November 2, 2016, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry, Acting Associate Administrator for Pipeline Safety.