

(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.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

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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., PHP-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.
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management System, U.S. Department of Transportation

(DOT), 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590.

Hand Delivery: DOT Docket Management System, Room W12-140, on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except federal holidays.

Instructions: Identify the docket number (PHMSA-2016-0092) at the beginning of your comments. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA has received your comments, include a self-addressed stamped postcard. Internet users may submit comments at <http://www.regulations.gov>.

Note: Comments will be posted without changes or edits to <http://www.regulations.gov>, including any personal information provided. Please see the 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 <http://dms.dot.gov>.

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

underground natural gas storage facilities, impose user fees on operators of these facilities, and prescribe procedures to collect those fees. Section 2 of the PIPES Act of 2016 authorizes \$8 million per year to be appropriated from those fees for each of fiscal years 2017-2019 for the newly established Underground Natural Gas Storage Facility Safety Account in the Pipeline Safety Fund. PHMSA is prohibited from collecting a user fee unless the expenditure of such fee is provided in advance in an appropriations act. If Congress appropriates funds to this account for fiscal years 2017-2019, PHMSA will collect these fees from the operators of the facilities.

According to the Energy Information Agency (EIA), there are 400 interstate and intrastate underground natural gas storage facilities currently in operation in the United States, with more than four trillion cubic feet of natural gas working capacity. EIA data is collected on form EIA-191, Field Level Storage Data (Annual), and can be accessed from the Related Links section on <http://www.eia.gov/naturalgas/storagecapacity/>. Three hundred twenty-six of those facilities store natural gas in depleted hydrocarbon reservoirs, while 31 facilities store natural gas in salt caverns and 43 store it in depleted aquifers. Of the 400 underground natural gas storage facilities in the U.S., approximately half (197) are interstate facilities.

PHMSA is currently developing an Interim Final Rule (IFR) that will fulfill the requirement in Section 12 of the PIPES Act of 2016 to establish minimum Federal safety standards for underground natural gas storage facilities. The Agency expects this IFR will be issued later this year, but PHMSA has already been preparing to assume regulatory oversight of these facilities. PHMSA is designing a training program for both Federal and State inspectors to enable thorough and effective oversight of all underground storage facilities. Inspection protocols are being developed and will be made publicly available. The protocols will inform all stakeholders of PHMSA's expectations for demonstrating compliance with the minimum safety regulations. PHMSA also plans to deploy Web sites with frequently asked questions and additional guidance on the safe operation of underground natural gas storage facilities.

Once new regulations are in place, PHMSA will directly regulate interstate facilities and will provide grants to State agencies that are or become certified to regulate intrastate facilities. If no State agency is certified in a given state,

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:

Tier	Assessment per operator	Working gas capacity (Mcf) range
1	\$12,308	Less than 1,550,000.
2	24,615	More than 1,550,000 and less than 3,500,000.
3	30,769	More than 3,500,000 and less than 6,500,000.
4	36,923	More than 6,500,000 and less than 11,500,000.
5	49,231	More than 11,500,000 and less than 15,500,000.
6	61,538	More than 15,500,000 and less than 22,000,000.
7	73,846	More than 22,000,000 and less than 30,000,000.
8	80,000	More than 30,000,000 and less than 50,000,000.
9	92,308	More than 50,000,000 and less than 85,000,000.
10	142,857	More than 85,000,000.

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.

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