January 18, 2017

Via email and hand delivery

Ms. Marie Therese Dominguez
Administrator
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590-0001


Dear Ms. Dominguez:

The American Gas Association (AGA), American Petroleum Institute (API), American Public Gas Association (APGA), and Interstate Natural Gas Association of America (INGAA) (jointly the “Associations”) jointly submit this petition for reconsideration of PHMSA’s Interim Final Rule establishing federal pipeline safety regulations for underground natural gas storage facilities (Interim Final Rule).

The Interim Final Rule incorporates by reference two API Recommended Practices (RPs): API RP 1170: Design and Operation of Solution-mined Salt Caverns used for Natural Gas Storage\(^2\) and API RP 1171: Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Depleted Hydrocarbon Reservoirs\(^3\) (jointly the “Recommended Practices”). The Associations have publicly supported PHMSA’s incorporation by reference of the Recommended Practices as federal regulations for natural gas storage, and fully supported their members in adopting the Recommended Practices in advance of any federal regulation on underground natural gas storage. However, the Interim Final Rule incorporates by reference RP 1170 and 1171 in a

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1 Although APGA’s members are not operators of underground natural gas storage facilities, APGA has a significant interest in the Interim Final Rule as consumers of storage services.


3 API Recommended Practice 1171 “Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Depleted Hydrocarbon Reservoirs” (1st edition, September 2015).
manner that significantly alters the consensus standards and imposes impracticable compliance
timeframes and unreasonable obligations. Accordingly, the Associations request that PHMSA
promptly revise its regulations for underground natural gas storage facilities at 49 C.F.R. § 192.12
to incorporate by reference RP 1170 and 1171 without modification and to provide for reasonable
implementation periods, as outlined in the enclosed Petition.

The Associations appreciate PHMSA’s consideration of this Petition.

Sincerely,

Christina Sames, Vice President Operations and Engineering
American Gas Association
400 North Capitol Street, NW
Washington, DC 20001
(202) 824-7214
csames@aga.org

John Erickson, P.E., Vice President, Operations
American Public Gas Association
201 Massachusetts Ave, NE Suite C4
Washington, DC 20002
202-464-0834
jerickson@apga.org

Robin Rorick, Midstream Group Director
American Petroleum Institute
1220 L Street, NW
Washington, DC 20005
(202) 682-8000
rorickr@api.org

Terry Boss, Senior Vice President of Environment, Safety And Operations
Interstate Natural Gas Association of America
20 F Street, NW
Suite 450
Washington, DC 20001
(202) 216-5900
tboss@ingaa.org

Enclosure

cc: Teresa A. Gonsalves, Chief Counsel (via email)
    Alan K. Mayberry, Associate Administrator for Pipeline Safety (via email)
    Howard “Mac” McMillan, Executive Director (via email)
The American Gas Association (AGA), American Petroleum Institute (API), American Public Gas Association (APGA), and Interstate Natural Gas Association of America (INGAA) (jointly the “Associations”) jointly submit this petition for reconsideration of PHMSA’s Interim Final Rule establishing for the first time Federal pipeline safety regulations for underground natural gas storage facilities (Interim Final Rule). 1 Underground storage of natural gas is an integral component of the nation’s energy system, and our nation’s significant storage capacity enables storage operators and utilities to reliably offer clean natural gas to consumers throughout the year in a cost-efficient manner and without interruption.

Each Association and its member companies has a strong commitment to advancing pipeline and underground natural gas storage safety. Building upon this commitment, the Associations fully supported the development of industry-wide safety standards for underground natural gas storage. As a result of these efforts, with input from national experts and stakeholders, including PHMSA and state regulators, API issued two Recommended Practices (RPs): API RP 1170: Design and Operation of Solution-mined Salt Caverns used for Natural Gas Storage 2 and


API RP 1171: *Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Aquifer Reservoirs*³ (jointly the “Recommended Practices”).

The Associations request that PHMSA promptly revise its regulations for underground natural gas storage facilities at 49 C.F.R. § 192.12 to provide for reasonable implementation periods and to incorporate by reference RP 1170 and 1171 without modification and, as outlined in this Petition. The Associations have fully supported their members in adopting these consensus standards in advance of any federal regulation on underground natural gas storage,⁴ and publicly supported PHMSA’s incorporation by reference of the Recommended Practices as federal standards for natural gas storage. The Associations support adoption of the Recommended Practices as an appropriate step to advance pipeline and underground natural gas storage safety. However, in the Interim Final Rule, PHMSA incorporated by reference RP 1170 and 1171 in a manner that significantly alters the consensus standards and imposes impracticable compliance time frames and unreasonable obligations. The Associations appreciate PHMSA’s efforts to address some of these concerns through their recently published Underground Natural Gas Storage: Frequently Asked Questions (FAQs).⁵ The Associations are committed to working with PHMSA to further develop and clarify these FAQs. However, because the FAQs may not be able to fully resolve the Associations’ concerns, in accordance with 49 C.F.R. § 190.335, the Associations submit this Petition for Reconsideration.⁶

The American Gas Association (AGA), founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. Forty-four of these members operate 292 underground natural gas storage fields, including 14,101 wells. There are more than 73 million residential, commercial and industrial natural gas customers in the U.S., of which 95 percent — more than 69 million customers — receive their gas from AGA members.

The American Petroleum Institute (API) is the national trade association representing all facets of the oil and natural gas industry including the transportation and storage of natural gas. API’s more than 625 members include large integrated companies, as well as exploration and

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⁸ This Petition for Reconsideration presents issues that may be readily remedied by PHMSA. Notwithstanding this petition, none of the parties waives any other legal or factual objections it may have including those under the Administrative Procedure Act and Pipeline Safety Act.
production, refining, marketing, pipeline, underground storage, and marine businesses, and service and supply firms.

The American Public Gas Association\(^7\) (APGA) is the national, non-profit association of publicly-owned natural gas distribution systems. APGA was formed in 1961 as a non-profit, non-partisan organization, and currently has over 700 members in 37 states. Overall, there are nearly 1,000 municipally-owned systems in the U.S. serving more than five million customers. Publicly-owned gas systems are not-for-profit retail distribution entities that are owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities.

The Interstate Natural Gas Association of America (INGAA) is a trade association that advocates regulatory and legislative positions of importance to the interstate natural gas pipeline industry in North America. INGAA’s members represent the vast majority of the interstate natural gas transmission pipeline companies in the United States, operating approximately 200,000 miles of pipelines and over 10,000 storage wells, and serve as an indispensable link between natural gas producers and consumers.

I. IT IS NOT PRACTICABLE FOR OPERATORS TO IMPLEMENT THE INTERIM FINAL RULE BY JANUARY 18, 2018.

In the Interim Final Rule, PHMSA requires that existing underground natural gas storage facilities using a solution-mined salt cavern for storage meet the requirements of API RP 1170, sections 9, 10, and 11, by January 18, 2018.\(^8\) Similarly, PHMSA requires that existing underground natural gas storage facilities using a depleted hydrocarbon reservoir or an aquifer reservoir for gas storage meet the requirements of API RP 1171, sections 8, 9, 10, and 11, by January, 18, 2018.\(^9,10\) The plain text of the Interim Final Rule requires operators of natural gas storage facilities to implement all actions under the applicable sections of API RP 1170 and 1171 within one year of the effective date of the Interim Final Rule, January 18, 2017.\(^11\) Based on PHMSA’s FAQs, the Associations do not believe this was the intent of the IFR, as this time frame

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\(^7\) Although APGA’s members are not operators of underground natural gas storage facilities, APGA has a significant interest in the Interim Final Rule as consumers of storage services.

\(^8\) 49 C.F.R. § 192.12(b).

\(^9\) 49 C.F.R. § 192.12(d).

\(^10\) Included in both Sections 192.12 (b) and (d) is a list of topics from the Recommended Practices that operators must comply with. \textit{Id.} (“operational, maintenance, integrity demonstration and verification, monitoring, threat and hazard identification, assessment, remediation, site security, emergency response and preparedness, and recordkeeping”). Because these terms are not taken directly from the Recommended Practices, it is not clear what regulatory purpose PHMSA intended by including this list.

is not just unreasonable, but simply not practicable, and would not substantively fulfill the goal of the Interim Final Rule and the Recommended Practices – to increase safety.

The Recommended Practices direct a risk-based approach to addressing the safe design, operation, and maintenance of existing underground natural gas storage facilities. Many of the requirements in both Recommended Practices are intended to be sequential and build upon one another. In other words, there is a necessary sequential progression and coordination of actions that operators must take in order to fully implement the Recommended Practices. It is important to understand that allocating additional resources will likely have limited impact since many actions must be taken sequentially instead of simultaneously. As such, there is a minimum amount of time necessary to work through the steps.

Actual operator experience in developing storage functional integrity management systems, as required by the Interim Final Rule, suggests that more than 12 months are needed for implementation. In part, significant time is required for internal familiarization, training, and culture change to implement a storage functional integrity management system and the “plan-do-check-act” process cycle for storage assets.

The risk management provisions of RP 1171 demonstrate the sequential steps operators must take to implement the Recommend Practice:

1. Identify and collect relevant information;\(^{12}\)
2. Identify and analyze potential threats and hazards impacting storage wells and reservoirs;\(^{13}\)
3. Evaluate and prioritize risks related to the storage operation;\(^{14}\)
4. Develop and implement preventative and mitigative measures to manage risks based on site-specific conditions;\(^{15}\) and
5. Periodically review and assess the effectiveness of the risk monitoring and management programs.\(^{16}\)

Once the risk assessments are completed, RP 1171 intends for operators of underground natural gas storage facilities to rely upon the risk assessment as the basis for developing and implementing a reservoir and well integrity demonstration, verification, and monitoring program. Similar to the risk assessment process, the process for maintaining the functional integrity of storage wells and reservoirs is sequential, beginning first with evaluative and data collection actions, and only then moving to monitoring and verification actions. Because many of these

\(^{12}\) API RP 1171 Section 8.3.
\(^{13}\) Id. at Section 8.4.
\(^{14}\) Id. at Section 8.5.
\(^{15}\) Id. at Section 8.6.
\(^{16}\) Id. at Section 8.7.
actions are sequential, operators of underground natural gas storage facilities cannot take all actions at once, but must complete each in turn. Because the result of one step is incorporated into the next, it is critical that operators work through each step in a careful and deliberative manner.

In addition to the sequential risk assessment and reservoir and well integrity demonstration, verification, and monitoring obligations, RP 1171 also provides instruction and obligations related to site security, emergency preparedness and procedures, many of which will be premised on the outcomes of the risk assessments and reservoir and well integrity actions.

One operator has documented their experience with building a storage functional integrity management system consistent with the Recommended Practices. Over an 18-month period beginning in 2013, the operator assembled internal and external subject matter experts and drafted, reviewed, and refined over 30 engineering standards, procedures, integrity plans, and related operating practices covering storage well and storage reservoir life cycle activity. The operator relied on 10 individuals, each with an average of 20 years each of subject matter experience, to complete the tasks. The operator believes they have equally as much work remaining to complete the first cycle of planning in their “plan-do-check-act” process cycle.

Another observation from actual experience developing a storage functional integrity management system highlights the time required for just one step in the process: reviewing and analyzing a well file. A well file typically includes paper documents such as permitting documents, equipment and material records, drilling and completion histories, and operational records. It is not unusual for the process of reviewing and analyzing a well file to take 5 to 10 hours for one well. For an operator of 500 wells, this process alone can require 30 man-months and does not include the time required to further incorporate and make the information in the file useful and available via a data management system.

Additionally, there are numerous logistical and administrative hurdles that make a one-year compliance time frame not practicable. There is limited specialized equipment and qualified personnel available to perform much of the work that could be required to implement the Recommended Practices. For example, API RP 1171 Section 9.3 requires operators to evaluate and monitor well integrity. Based on the outcome of an operator’s risk evaluation, this section could require the use of wireline and/or “slickline” trucks and multi-caliper tools to conduct downhole casing inspection logging, along with personnel qualified to conduct these complex operations. The limited availability of equipment and personnel will have a direct impact on the timing of implementing the Recommended Practices. PHMSA’s one-year compliance time frame cannot be achieved given the necessary scheduling and allocating of this specialized equipment and qualified personnel.

Operators will be creating and implementing these functional integrity management systems contemporaneously with executing on-going, planned storage well integrity work. Storage operators have not waited for the federal rule to maintain their storage wells and there will
not be a hiatus on well integrity work while frameworks are being put in place. As such, not all of an operator’s storage resources and subject matter experts can or should be expected to be completely dedicated to plan development.

The process for implementing the Recommended Practices will be similar in many ways to the Gas Transmission Integrity Management (“Gas IM”) regulations, which PHMSA promulgated in 2004.\textsuperscript{17} In developing the Gas IM regulations, PHMSA acknowledged that a sequential series of actions over a period of time would be necessary for operators to develop sophisticated and effective integrity management programs.\textsuperscript{18} The Gas IM regulations required operators to develop baseline plans for implementing assessment requirements within one year, and required assessments to be completed within ten years (with 50% being required within five years).\textsuperscript{19}

The Associations recognize that PHMSA has issued FAQs on implementation timing, but believe that the regulatory text must be revised to provide regulatory clarity and certainty. Instead of a one-year compliance time frame for existing underground natural gas storage facilities to implement all actions in the applicable RP sections, the Associations request that PHMSA revise the regulatory text to allow for a phased-in approach, as outlined below, which would be consistent with the approach described within the FAQs.

To better define what is achievable by January 18, 2018, the Associations suggest that the foundational components of a storage functional integrity management system can be put in place and available for inspection by PHMSA within 12 months of the Effective Date of the Interim Final Rule. Foundational components include the written framework, which would identify the integrity management program, as well as plans and procedures to be developed during the full-development phase of the system. Specifically, these foundational components would include a plan for developing procedures, a specific breakout of how the applicable Recommended Practice requirements would be addressed in the management system framework and its procedures, the procedures to be developed, the resources committed to the development and implementation, how staff will be trained in awareness and application of the procedures, and an implementation schedule. These components must be thoughtfully prepared as they represent the roadmap providing the foundation for development of an operator’s storage functional integrity management system.

Based on operators’ experience in beginning to build these storage functional integrity management systems, we strongly recommend that PHMSA set the requirement to three years for

\textsuperscript{17} 49 C.F.R. Part 192, Subpart O.


\textsuperscript{19} 49 C.F.R. § 192.921(d).
operators to have a storage functional integrity management system in place, including training and qualifying staff and contractors on requirements, building competency, and assuring supervision and documentation.

In addition, the Associations request that PHMSA incorporate the risk assessment and integrity assessment timelines currently outlined in Underground Natural Gas Storage FAQs 5 & 6.\textsuperscript{20} Operators would be required to complete an underground natural gas facility risk assessment, including preventive and mitigative measures, within 3 to 8 years, depending on the size, complexity and cursory risk evaluation of the facilities. As warranted by the risk assessment, baseline integrity assessments in each storage field would start within two years of the effective date of the rule, beginning with the highest risk facilities identified from the risk assessment process. Baseline assessments in each storage field would be completed within 3 to 8 years, depending on the size and complexity of the storage field and as warranted by the risk assessment. Operators would expedite implementation of preventive and mitigative measures for high risk or imminent risk facilities as identified by their risk assessment.

**II. REQUIRING ALL “NON-MANDATORY” PROVISIONS AS MANDATORY IS NOT NECESSARY FOR PHMSA’S ENFORCEMENT AND MAKES THE INTERIM FINAL RULE UNREASONABLE.**

API RP 1170 and 1171 are intended to maintain functional integrity through design, construction, operation, monitoring, maintenance, and documentation practices for underground natural gas storage facilities. To achieve this integrity, the Recommended Practices contain numerous provisions, including the use of the term “shall” to denote a minimum requirement in order to conform to and comply with the RP. The Recommended Practices also use non-mandatory terms such as “should,” “may,” or “can” to denote a recommendation that is advised, but not required in order to conform to the specification.

In the Interim Final Rule, PHMSA requires that all “non-mandatory provisions (i.e., provisions containing the word ‘should’ or other non-mandatory language) are adopted as mandatory provisions.”\textsuperscript{21} According to PHMSA, adopting non-mandatory provisions as mandatory is necessary to address PHMSA’s “concerns about the enforceability of these [recommended] practices.”\textsuperscript{22} However, changing the Recommended Practices in this manner is not necessary for enforcement, nor is it practicable or reasonable. For the reasons outlined below, the Associations believe that there is no regulatory justification for making all “non-mandatory” provisions “mandatory,” and request that PHMSA eliminate 49 C.F.R. § 192.12(f).


\textsuperscript{21} 49 C.F.R. § 192.12(f).

\textsuperscript{22} 81 Fed. Reg. 91,865.
A. The Recommended Practices Contain Sufficient “Mandatory” Provisions to Ensure Enforceability.

Although both RP 1170 and 1171 contain “non-mandatory” provisions, this fact alone does not affect the enforceability of the Recommended Practices. Throughout the Recommended Practices, there are mandatory statements imposing broad obligations on operators of underground natural gas storage facilities. For example, within RP 1171 Section 8 “Risk Management for Gas Storage Operations,” there is a broad obligation imposed on operators to develop, implement, and document a comprehensive risk management plan consistent with the intended actions of RP 1171:

The operator shall develop, implement, and document a program to manage risk that includes data collection, identification of potential threats and hazards to the storage operation, risk analysis including estimation of the likelihood of occurrence of events related to each threat, the likelihood of occurrence and potential severity of the consequences of such events, and the preventative, mitigative, and monitoring processes to reduce the likelihood of occurrence and/or the likelihood and severity of consequences, and a periodic review and reassessment of the processes.23

Subsequent parts of Section 8 related to specific components of a risk management program – such as threat and hazard identification and preventative and mitigative measures – include non-mandatory statements. However, these non-mandatory statements do not compromise the enforceability of the broad obligations imposed on operators through the mandatory requirements. Instead, the non-mandatory statements provide best practice recommendations that operators should consider and apply in many situations, where warranted by site-specific conditions, but are not necessary for safety in all situations. When evaluating a storage operator’s functional integrity management program and its effectiveness in achieving the mandatory obligations outlined in the Recommended Practices, PHMSA inspectors should still reference the non-mandatory practices; these are important practices that prudent operators will often employ, but may not be necessary or practicable for functional integrity at every facility, based on site-specific factors.

As a specific example, RP 1171 Section 8.7.1 requires an operator to assess the effectiveness of risk monitoring and risk management programs and maintain a continual review and improvement cycle, but provides discretion on the interval of review and reassessment.24 This discretion does not compromise the enforceability of the obligation to assess the effectiveness of

23 API RP 1171 Section 8.2 (emphasis added).
24 Id. at Section 8.7.1 (“The operator shall assess the effectiveness of risk monitoring and risk management programs and maintain a continual review and improvement cycle. . . The interval of review and reassessment should be short enough to identify operational and monitoring trends and measure the effectiveness of P&M measures . . .”) (emphasis added).
the risk programs, or PHMSA’s ability to issue a corrective order if an operator does not implement an effective review and improvement cycle.

Operator discretion and the use of non-mandatory provisions within pipeline safety regulations is not new, and is not limited to documents incorporated by reference. For example, PHMSA’s requirements for operators to take additional preventative and mitigative measures on transmission pipelines in high consequence areas provides the operator with discretion to implement measures that the operator determines are required based on a risk assessment:

An operator must base the additional measures on the threats the operator has identified to each pipeline segment. . . . An operator must conduct, in accordance with one of the risk assessment approaches in ASME/ANSI B31.8S . . . a risk analysis of its pipeline to identify additional measures to protect the high consequence area and enhance public safety. Such additional measures include, but are not limited to, installing Automatic Shut-off Valves or Remote Control Valves, installing computerized monitoring and leak detection systems, replacing pipe segments with pipe of heavier wall thickness, providing additional training to personnel on response procedures, conducting drills with local emergency responders and implementing additional inspection and maintenance programs.

The regulations clearly put the burden and discretion on operators to determine the appropriate preventative and mitigative measures to implement. Similarly, PHMSA has incorporated by reference other API Recommended Practices without the caveat that non-mandatory statements must be mandatory for enforcement purposes.25 “Should” requirements are enforceable by PHMSA in appropriate circumstances, just as “shall” requirements are enforceable.

Finally, the fact that API elected to issue RPs 1170 and 1171 as “recommended practices” has no bearing on the enforceability of the Recommended Practices.26 API Standards include several different types of documents, including “specifications,” “recommended practices,” “standards,” and “codes.”27 Recommended Practices” are simply a type of API standard that communicate recognized industry practices and may include both mandatory and non-mandatory requirements. PHMSA’s enforceability of these provisions is not compromised by the use of “should” in the regulatory text. As such, PHMSA should not be concerned with the enforceability of the non-mandatory provisions in the Recommended Practices.

25 See. id. at § 192.7(b)(1)-(3) (incorporating by reference API Recommended Practice 5L1, 5LT and 5LW).

26 81 Fed. Reg. 91865 (“API elected to issue RPs 1170 and 1171 in the form of ‘recommended practices,’ as opposed to ‘standards.’ This presented PHMSA with the challenge of dealing with concerns about the enforceability of these practices.”).

B. **PHMSA’s Broad Requirement That All “Non-Mandatory” Provisions Become “Mandatory” Has Resulted in a Regulation That is Not Practicable and is Unreasonable.**

In Section 49 C.F.R. § 192.12(f), PHMSA has added regulatory language stating that “the non-mandatory provisions (i.e., provisions containing the word ‘should’ or other non-mandatory language) are adopted as mandatory.” By including this language, PHMSA has significantly altered the Recommended Practices and has created regulatory requirements that are not practicable and are unreasonable.

The Recommended Practices were adopted with definitions of “shall” and “should” and the understanding that the term “should” would denote “a recommendation of that which is advised but not required in order to conform to the specification.” These terms are often included where a recommendation may not be appropriate or practical in all situations, or may be inappropriate due to site-specific conditions. For example, in RP 1171 Section 6.4.5 Cement Pumping Design, the RP recommends that pipe movement during hole conditioning and cement pumping be employed:

> When feasible, pipe movement (i.e., either rotation or reciprocation of the casing) during hole conditioning and cement pumping should be employed to help eliminate the possibility of cement channeling. (emphasis added)

Under Section 192.12(f), the requirement to employ pipe movement would become mandatory. However, pipe movement is not appropriate in all situations and could actually damage the seal between the pipe and caprock and can result in the collapse of the hole or a stuck pipe.

The changes to the Recommended Practices through Section 192.12(f) also impose obligations on activities outside the control of underground natural gas storage operators. For example, in RP 1171 Section 9.4.3 Third-Party Activity, states that “[t]hird-party wells located within the lateral and vertical buffer zone being plugged and abandoned by the third party should be plugged in a manner to isolate the storage reservoir and protect its integrity.” Operators of underground natural gas storage facilities have no control or authority to ensure that third-party wells meet this requirement. Similarly, RP 1171 Section 10.3.1 would require operators to maintain lease or well roads, even though many of these roads are not owned by underground natural gas storage operators, but are owned by third parties or government entities.

In addition to applying to “should” statements, Section 192.12(f) also applies to all “non-mandatory language” contained in the Recommended Practices. As a result, phrases such as “can”

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28 49 C.F.R. § 192.12(f).
29 API RP 1171 at iii; API RP 1170 at iii.
30 API RP 1171 Section 10.3.1 (Lease or well roads should shall be maintained in a condition that permits personnel and equipment access to the well.).
and “may” within the Recommended Practices are now treated as “shall.” Such revisions are problematic and create numerous nonsensical regulatory requirements. For example, RP 1171 Section 11.12.4 could be interpreted to require the use of contractor personnel in the performance of construction, operating, maintaining and monitoring duties associated with storage wells and reservoirs. Clearly, this is not the intent of this section of the Recommended Practice. Similarly, section 8.4.1 could oblige operators to determine that some storage facilities are not susceptible to specific threats based on existing information, which is clearly contrary to the goals of this rulemaking.

PHMSA has indicated their intent to “further evaluate the need for any additional regulatory requirements for underground storage facilities,” after the issuance of the IFR. During this evaluation period, it would be appropriate for PHMSA to establish a process for exploring additional requirements, beyond the mandatory requirements prescribed in the Recommended Practices, and for developing the language and applicability of additional mandatory requirements. This process should include an opportunity for discussion with key stakeholders, including storage operators, and could also inform the next edition of the Recommended Practices. However, the revisions to the Recommended Practices that result from current Section 192.12(f) result in unreasonable, not practical and often nonsensical regulatory requirements imposed on operators of underground natural gas storage facilities.

C. The Procedure for Obtaining a Variance from the Recommended Practices is Unworkable and a Departure from PHMSA’s Past Position

Under Section 192.12(f), PHMSA has provided operators of underground natural gas storage facilities with a procedure for deviating from the Recommended Practices. However, because the procedure would only apply in narrow circumstances and is unreasonably burdensome, many operators could be left with essentially no mechanism for obtaining a variance from the Recommended Practices.

PHMSA establishes a reasonable test to support a variance: “no adverse impact on design, construction, operations, maintenance, integrity, emergency preparedness and response, and overall safety.” However, inconsistent with this test is general language limiting the availability of variances to situations where an action is “not practicable and not necessary for safety.” As a

31 API RP 1171 Section 11.12.4 Contractor Personnel (The operator may shall use contractor personnel in the performance of constructing, operating, maintaining, and monitoring duties associated with storage wells and reservoirs. This subsection provides recommendations regarding training of contractor personnel.).

32 API RP 1171 Section 8.4.1. General (The operator may shall determine that some storage facilities are not susceptible to specific threats based on existing information, in which case the operator can provide justification and documentation for the exclusion of a specific threats.).


34 49 C.F.R. § 192.12(f).

35 49 C.F.R. § 192.12(f) (emphasis added).
result, the variance process may not be available for an action that is “not necessary for safety,” but that may otherwise be practicable to implement. The resulting waste of operator resources is likely not intended. Likewise, the variance process should be available for actions that simply are not practicable to implement. By definition, an action that is not practicable cannot be put into practice, yet that alone is not sufficient for an operator to avail itself of the variance procedure. Requiring both prongs of the test to be met is unduly burdensome.

Second, in the event that an action meets the “not practicable and not necessary for safety” standard, operators must then provide a substantial amount of justification from a subject matter expert that there will be no adverse impact on any aspect of the storage facility, and this justification must be signed by a corporate executive.\textsuperscript{36} The amount of certainty and justification necessary to use the variance, coupled with the corporate signature, essentially ensures that the variance process will be impracticable to use.

The variance process required in the Interim Final Rule is a time intensive, expensive process for each variance and is a substantial departure from PHMSA’s prior positions on variances. In 1999, the Research and Special Programs Administration, PHMSA’s predecessor agency, stated that operators should have some discretion when complying with recommended practices and that an operator should note in its procedural manual the reasons why compliance with provisions was not necessary for safety.\textsuperscript{37} Several years later, in 2005, when adopting a recommended practice for public awareness, PHMSA stated that it was not its intent “that every occurrence of ‘should,’ ‘may,’ or ‘can’ found in API RP 1162 be translated to ‘shall’ as a result of the incorporation.”\textsuperscript{38} Instead, operators should document in procedural manuals “the reasons why compliance with all or certain provisions of the practice is circumstantially unnecessary.”\textsuperscript{39}

When compared to these prior variance requirements, which are still onerous, the variance requirements in the Interim Final Rule are unworkable for many operators. The burden associated with the variance process is magnified by PHMSA adopting non-mandatory provisions that were never intended to apply to all facilities as mandatory. Accordingly, the Associations request that PHMSA revise its regulations to document variances in its procedural manual similar to the 1999 or 2005 methodology or allow for variances in situations where an action is “not practicable or not necessary for safety.”

\textsuperscript{36} Id.

\textsuperscript{37} Pipeline Safety: Adoption of Consensus Standards for Breakout Tanks, 64 Fed. Reg. 15,926, 15929 (April 2, 1999).


\textsuperscript{39} Id. Although the final regulatory text required operators to provide justification as to why compliance was not practicable and not necessary for safety, PHMSA’s statements in the preamble suggest a less burdensome variance process than that included in the Interim Final Rule.
III. CONCLUSION

The Associations continue to support PHMSA’s efforts to regulate the safety of underground natural gas storage facilities and believe that the changes requested through this Petition will ensure that the regulations are practicable, reasonable and will enhance the safety of these facilities. In summary, the Associations request that PHMSA promptly revise its regulations for underground natural gas storage facilities at 49 C.F.R. § 192.12 to incorporate by reference RP 1170 and 1171 without modification and provide for reasonable implementation periods, as outlined in this Petition.

Respectfully submitted,

Christina Sames, Vice President Operations and Engineering
American Gas Association
400 North Capitol Street, NW
Washington, DC 20001
(202) 824-7214
csames@aga.org

John Erickson, P.E., Vice President, Operations
American Public Gas Association
201 Massachusetts Ave, NE Suite C4
Washington, DC 20002
202-464-0834
jerickson@apga.org

Robin Rorick, Midstream Group Director
American Petroleum Institute
1220 L Street, NW
Washington, DC 20005
(202) 682-8000
rorickr@api.org

Terry Boss, Senior Vice President of Environment, Safety and Operations
Interstate Natural Gas Association of America
20 F Street, NW
Suite 450
Washington, DC 20001
(202) 216-5900
tboss@ingaa.org

Date: January 18, 2017