

CERTIFICATION OF
PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES
FILED WITH THE
DEPARTMENT OF STATE

I do hereby certify:

/x/ (1) That all statutory rulemaking requirements of Chapter 120, F.S., have been complied with; and

/x/ (2) There is no administrative determination under subsection 120.56(2), F.S., pending on any rule covered by this certification; and

/x/ (3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by paragraph 120.54(3)(a), F.S., and;

/x/ (a) Are filed not more than 90 days after the notice; or

/ (b) Are filed not more than 90 days after the notice not including days an administrative determination was pending;

AFA or
APP _____
CAF _____
CMU _____
CTR _____
EAG not
LEG _____
MAS _____
OPC _____
RRR _____
SEC I
WAW _____
OTH not

/ (c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or
/ (d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment

FILED
APR 23 1998
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ATLANTA
COMMERCIAL BANK
OF ATLANTA

DOCUMENT NUMBER-DATE

05308 APR 26 1998

FPSC-RECORDS/REPORTING

the final public hearing on the rule; or

 / (e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

 / (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

 / (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

 / (h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

 / (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the small business ombudsman.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No.

25-12.005

FILED
99 APR 23 AM 11:42
DEPT OF STATE
TALLAHASSEE FLORIDA

Under the provision of subparagraph 120.54(3)(e)6., F.S.,
the rules take effect 20 days from the date filed with the
Department of State or a later date as set out below:

Effective: May 13, 1999
(month) (day) (year)



BLANCA S. BAYO, Director
Division of Records & Reporting

416
Number of Pages Certified

(S E A L)

RCB

25-12.005 Codes and Standards Adopted.

The Minimum Federal Safety Standards and reporting requirements for pipeline facilities and transportation of gas prescribed by the United States Department of Transportation in Parts 191 and 192 of Title 49, Code of Federal Regulations (CFR) as amended through October 20, 1998 ~~January 31, 1991~~, are adopted as part of these rules. Part 199, "Drug and Alcohol Testing" as amended through October 20, 1998 ~~December 27, 1989~~ is adopted to control drug use, by setting standards and requirements to apply to the testing and use of all emergency response personnel under the direct authority or control of a gas utility or pipeline operator, as well as all employees directly or indirectly employed by gas pipeline operators for the purpose of operation and maintenance and all employees directly or indirectly employed by intrastate gas distribution utilities for on-site construction of natural gas transporting pipeline facilities. Part 199 also is adopted to prescribe standards for use of employees who do not meet the requirements of the regulations.

Specific Authority: 368.05(2), 350.127(2), F.S.

Law Implemented: 368.03, F.S.

History: New 11/14/70, Amended 9/24/71, Revised 9/21/74, Amended 10/7/75, 11/30/82, 10/2/84, 8/8/89, formerly 25-12.05 ~~Amended~~ 1/7/92, _____.

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96 APR 23 AM 11:42
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions from existing law.

Rule 25-12.005
Docket No. 981095-GU

SUMMARY OF RULE

Adopts federal standards as amended through October 10,
1998.

SUMMARY OF HEARINGS ON THE RULE

No hearing was requested and none was held.

FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

Amendment updates reference in Rule 25-12.005 to federal
standards previously adopted as amended through October 20, 1998.

FILED
99 APR 23 AM 11:42
PARLIMENT OF STATE
TALLAHASSEE, FLORIDA

CERTIFICATION OF
MATERIALS INCORPORATED BY REFERENCE
IN RULES FILED WITH THE DEPARTMENT OF STATE

Pursuant to Rule 1S-1.005, Florida Administrative Code, I do hereby certify that the attached are copies of the following material incorporated by reference in Rule 25-12.005, F.A.C..

Under the provisions of subparagraph 120.54(3)(e)(6), F.S., the attached materials take effect 20 days from the date filed with the Department of State, or a later date as specified in the rule.

"Natural Gas Pipeline Safety Amendments to 192 Since Last Adoption"



BLANCA S. BAYO, Director
Division of Records & Reporting

411

Number of Pages Certified

(S E A L)

RCB

FILED
99 APR 23 AM 11:42
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

NATURAL GAS PIPELINE SAFETY AMENDMENTS TO 192 SINCE LAST ADOPTION

66	08/08/91	192.603C	ALLOWS FOR ENFORCEMENT ACTIONS FOR INADEQUATE PLANS & PROCEDURES
67	01/06/92	192.1, .3, .612	UNDERWATER INSPECTION & REBURIAL OF PIPELINES IN THE GULF OF MEXICO
68	4/19/93	192.7, .11, .55, .63, .65, .113, .147, .153, .163, .177, .279, .281, .283, Appendix, Appendix B	INCORPORATED BY REFERENCE
69	09/16/93	192.736	GAS DETECTION AND MONITORING IN COMPRESSOR BUILDINGS
70	11/22/93	192.723	LEAKAGE SURVEYS
71	3/14/942/11/95	192.605(b)(9), 192.453, 192.603, 192.605, 192.616, 192.706, 192.723, 192.727	TRENCHING SAFETY, O&M MANUAL
71A	4/17/95	192.605(a)(b)	O&M PROCEDURES
	5/12/94	192.3, 9, 150,	PASSAGE OF INTERNAL INSPECTION DEVICES
73	4/19/95	192.614, .707	DAMAGE PREVENTION LINE MARKERS
74	4/26/96	192.11, .227, .361, .367, .511, .603, .623	UPDATE AND CORRECTIONS
75	7/24/96	192	UPDATE AND CORRECTIONS, CORRECTIONS TO AMD 75
76	5/24/96	192.63, .189, .625, Appendix A	PERIODIC UPDATES TO PIPELINE SAFETY REGULATIONS
77	8/30/96	192	REPORTING REQUIREMENTS FOR GAS PIPELINES
78	8/07/96	192	STANDARDS CORRECTION
79	7/05/96	192.5	STANDARDS CORRECTION
80	1/17/97	192.381	EXCESS FLOW VALVE - PERFORMANCE STANDARDS
81	11/19/97	192.1, .3, .10	MEMORANDUM OF UNDERSTANDING WITH THE DEPARTMENT OF INTERIOR
82	11/19/97	192.614	MANDATORY PARTICIPATION IN ONE-CALL SYSTEMS
83	2/17/97	192.16, .107, .614, Appendix A	UPDATES TO PIPELINE SAFETY REGULATION

FILED
99 APR 23 AM 11:42
DEPARTMENT OF STATE
ALABAMA
TALLAHASSEE, FLORIDA

NATURAL GAS PIPELINE SAFETY AMENDMENTS TO 199 SINCE LAST ADOPTION

2	01/17/90	199.3, 7, 9, 11 & 15	REMOVE REHAB REQUIREMENTS & REQUIRE EMPLOYEE NOTIFICATION OF PROGRAM
3	12/27/89	199.1 (d)	DELAY EFFECTIVE DATE (FOREIGN WORKERS)
4	08/08/91	199.7(b)	AMENDING PLANS & PROCEDURES
5	04/24/91	199.1(d)	DELAY EFFECTIVE DATE (FOREIGN WORKERS)
6	08/19/91	199.7	TECHNICAL CORRECTION
7	07/14/92	199.1(d)	DELAY EFFECTIVE DATE (FOREIGN WORKERS)
8	1/1/94	199.1(a), 23(a), 25	REPORTING ANTI-DRUG TESTING RESULTS
9	3/17/94	199 SUBPART B	ALCOHOL TESTING & REPORTING
10	1/1/95	199.225	DRUG AND ALCOHOL TESTING
11	1/1/95	199.3, 11	DEFINITIONS AND DRUG TESTS REQ
12	1/1/95	199.225	ALCOHOL TESTING, DRUG TESTING, PIPELINE SAFETY, RECORD KEEPING AND REPORTING
13	4/26/96	199.3, 7, 205	UPDATE AND CORRECTIONS
14	12/12/96	199.25, 229	REPORTING OF DRUG & ALCOHOL TESTING RESULTS
15	3/17/98	199.3, 11, 15,	SUBSTANCE ABUSE PROFESSIONAL EVALUATION
16	12/24/97	199.1	CONTROL OF DRUG AND ALCOHOL MISUSE
17	3/24/98	199.17	RETENTION OF SAMPLES
UNNUMBERED	7/9/96	199.205	DEFINITION OF "SUBSTANCE ABUSE PROFESSIONAL"

Amendments

192

Docket Nos. PS-114; Amdts. 190-3, 192-66, 193-7, 195-46, 199-1

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 192, 193, and 195 and 199

[Docket Nos. PS-114; Amdts. 190-3, 192-66, 193-7, 195-46, 199-1]

[RIN 2137-AB77]

Amendment of an Operators Plans or Procedures

AGENCY: Research and Special Program Administration (RSPA).

ACTION: Final rule.

SUMMARY: RSPA is making changes in the procedures and policy by which its Office of Pipeline Safety (OPS) addresses alleged deficiencies in operators required plans and procedures. OPS administers a statutory process for amending plans and procedures it finds to be inadequate to achieve safe operations. Until now, this process has required that pipeline operators amend plans and procedures that OPS finds inadequate, but has not subjected operators to other enforcement sanctions. As of the effective date of this action, operators will be subject to all enforcement sanctions under the Natural Gas Pipeline Safety Act of 1968, as amended, and the Hazardous Liquid Pipeline Safety Act of 1979, as amended, for failure to maintain all plans and procedures in accordance with applicable requirements. This action is necessary to assure that operators plans and procedures are adequate to achieve safe operations.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Cesar DeLeon, Assistant Director for Regulation, Office of Pipeline Safety, Research and Special Programs Administration, 400 Seventh Street SW, Washington, DC 20590, (202) 366-1640.

**SUPPLEMENTARY
INFORMATION:**

Background

In accordance with section 13 of the Natural Gas Pipeline Safety Act of 1968 (NGPSA) (49 U.S.C. App. 1680), as amended, and section 210 of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPISA) (49 U.S.C. App. 2009), as amended, OPS administers a statutory process for amending operators plans it finds to be inadequate.

On November 6, 1989, OPS published in the Federal Register (54 FR 46684-46685), Docket No. 114, Notice No. 1) a notice of proposed rulemaking to make changes in the procedures and policy by which it addresses deficiencies in operators plans and procedures. Because the statutory process was

the plans.

Several commenters stated that an operator should be subject to a civil penalty only if it refuses to adjust deficient plans or procedures. RSPA is making no changes to its proposed rule based on this comment. Subjecting operators to civil penalties should provide them with greater incentive to assure that their plans and procedures are adequate to provide safe operations of their systems and to minimize hazards in emergencies. The fact that we can always find something wrong, as one commenter argued, does not convince us that civil penalties are unnecessary; in fact, we reach the opposite conclusion. Moreover, if a civil penalty is proposed, an operators due process protections will remain substantially the same as those afforded operators under the amendment process, including prior notice and an opportunity for an informal hearing before final agency action is taken. An operator is not automatically assessed a civil penalty pending a hearing, as one commenter feared; a civil penalty is only proposed pending a hearing or other response option chosen by the operator.

One commenter requested that a paragraph be added to the amendment procedures requiring that OPS neither issue a notice of amendment nor undertake enforcement action if the operator, after a routine inspection and at the request of the Region Chief, revises its plans and procedures as requested. RSPA is not adding this paragraph. One of the stated purposes of the present regulatory action is to expand the enforcement tools available to OPS in addressing the quality and effectiveness of an operators plans and procedures; the commenters suggested paragraph would actually limit those tools because even the prior amendment procedures contained in 49 CFR 195.402(b) did not contain the requested restriction. There certainly would be less incentive for an operator to assure the quality and effectiveness of its plans and procedures before an inspection if it knew that no notice of amendment would be issued and no other enforcement action would be taken.

RSPA disagrees with one commenters argument that subjecting operators to civil penalties promotes form over substance because an operators actual operating procedure may comply with the regulations whereas its procedural manual may contain errors or omissions. Safe operation of a pipeline is dependent upon adequate and accurate manuals whose provisions are adhered to by the operators employees and contractor personnel. Allowing inadequate or inaccurate manuals to be operators guides would not further safe industry practices.

RSPA also disagrees with the comment that the proposal is not in keeping with the intent of performance-type regulations. RSPA has not added to the regulations specific requirements that must be included in an operators plans and procedures. More detailed procedures are addressed in a different proceeding (Docket No. PS 113; 54 FR 46685 (Nov. 6, 1989)). It is not necessary, however, that substantive rules in the latter proceeding become effective before the procedural rules in this one, as one commenter requested. Strengthening OPSs enforcement of the adequacy of all plans and procedures should not be delayed until specified changes in some procedures are finalized.

One commenter also claimed to be unaware of any accidents that could be attributed to deficient manuals. RSPA, however, is aware of deficiencies in operating procedures which could have contributed to accidents. For example, on December 24, 1988, Shell Pipe Line Company experienced a failure on its Ozark Pipeline System. OPSs review of Shells written manuals conducted during its investigation of the failure disclosed deficiencies relating to procedures during abnormal operations required by 49 CFR 195.402(d). These deficiencies may have contributed to the failure.

The one state agency commenting argued that moving 49 CFR 193.2017(b) to part 190 would remove that states authority to require amendments of plans and procedures because it had not adopted part 190. RSPA does not agree that moving the procedures to part 190 would remove the states authority since that authority is based on statute.

Section 13 of the Natural Gas Pipeline Safety Act and section 210 of the Hazardous Liquid Pipeline Safety Act provide that if the Secretary or appropriate state agency with responsibility for enforcement of compliance with the standards finds that an operators inspection and maintenance plan is inadequate

RSPA has analyzed this action in accordance with the principles and criteria of Executive Order 12612 (52 FR 41685 (October 26, 1987)) and has determined that it does not have sufficient Federalism implications to warrant preparing a Federalism Assessment.

List of Subjects

49 CFR Part 190

Enforcement, Operations and maintenance procedures, Pipeline safety

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements

49 CFR part 193

Pipeline safety, Plans and procedures, Procedural manual

49 CFR Part 195

Operations and maintenance procedures, Pipeline safety, Procedural manual

49 CFR part 199

Drug testing, Pipeline safety, Reporting and recordkeeping requirements, Safety, Transportation

In consideration of the foregoing, title 49, Code of Federal Regulations, parts 190, 192, 193, 195, and 199 are amended as follows:

PART 190[AMENDED]

1. The authority citation for part 190 continues to read as follows

Authority: 49 App. U.S.C. 1672, 1677, 1679a, 1679b, 1680, 1804, 2002, 2006, 2007, 2008, 2009, and 2010; 49 CFR 1.53.

2. In §190.203, paragraph (d) is revised to read as follows:

§190.203 Inspections.

• • • • •
(d) To the extent necessary to carry out his responsibilities under the HLPFA, HMTA, or the NGPSA, the Administrator, RSPA, or the Director, OPS, may require testing of portions of pipeline facilities subject to those Acts that have been involved in, or affected by, an accident. However, before exercising this authority, the Administrator, RSPA, or the Director, OPS, shall make every effort to negotiate a mutually acceptable plan with the owner of those facilities and, where appropriate, the National Transportation Safety Board for performing the testing.
• • • • •

3. In § 190.211, paragraph (a) is revised to read as follows

Docket Nos. PS-114; Amdts. 190-3, 192-66, 193-7, 195-46, 199-1

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 192, 193, and 195 and 199

[Docket Nos. PS-114; Amdts. 190-3, 192-66, 193-7, 195-46, 199-1]

[RIN 2137-AB77]

Amendment of an Operators Plans or Procedures

AGENCY: Research and Special Program Administration (RSPA).

ACTION: Final rule.

SUMMARY: RSPA is making changes in the procedures and policy by which its Office of Pipeline Safety (OPS) addresses alleged deficiencies in operators required plans and procedures. OPS administers a statutory process for amending plans and procedures it finds to be inadequate to achieve safe operations. Until now, this process has required that pipeline operators amend plans and procedures that OPS finds inadequate, but has not subjected operators to other enforcement sanctions. As of the effective date of this action, operators will be subject to all enforcement sanctions under the Natural Gas Pipeline Safety Act of 1968, as amended, and the Hazardous Liquid Pipeline Safety Act of 1979, as amended, for failure to maintain all plans and procedures in accordance with applicable requirements. This action is necessary to assure that operators plans and procedures are adequate to achieve safe operations.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Cesar DeLeon, Assistant Director for Regulation, Office of Pipeline Safety, Research and Special Programs Administration, 400 Seventh Street SW, Washington, DC 20590, (202) 366-1640.

**SUPPLEMENTARY
INFORMATION:**

Background

In accordance with section 13 of the Natural Gas Pipeline Safety Act of 1968 (NGPSA) (49 U.S.C. App. 1680), as amended, and section 210 of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPsA) (49 U.S.C. App. 2009), as amended, OPS administers a statutory process for amending operators plans it finds to be inadequate.

On November 6, 1989, OPS published in the Federal Register (54 FR 46684-46685), Docket No. 114, Notice No. 1) a notice of proposed rulemaking to make changes in the procedures and policy by which it addresses deficiencies in operators plans and procedures. Because the statutory process was

implemented in parts 193 and 195 only, OPS proposed to make the procedures and policy in those parts applicable to operators plans and procedures under parts 192 and 199 as well. To accomplish this, OPS proposed to move the current procedures found in 49 CFR 195.402(b) and 193.2017(b) (with appropriate modification) to a new 49 CFR 190.9, which would be applicable to all plans and procedures in Parts 192, 193, 195, and 199. OPS also proposed to strengthen its enforcement of the adequacy of these plans and procedures by subjecting operators to the assessment of civil penalties (and criminal penalties if a violation is committed knowingly and willfully), and any other appropriate sanction. Both civil penalty and criminal sanctions are available under either the NGPSA (49 U.S.C. App. 1671 et seq.) or the HLPESA (49 U.S.C. App. 2001 et seq.). OPSs enforcement of the adequacy of written plans and procedures had previously been restricted to requiring that pipeline operators amend their plans and procedures. Comments to the notice of proposed rulemaking were due on or before December 6, 1989.

Comments Received

OPS received 19 comments: one from a state agency, three from trade associations, seven from utilities, and eight from pipeline companies. Four commenters supported the proposal.

Three commenters, who suggested changes, asked that an operator be given the opportunity to present evidence of its ongoing program to correct any alleged inadequacies in its plans and procedures before the Director of OPS (Director) makes a determination concerning adequacy. RSPA is making no changes to the proposed rule based on this comment. If an operator has corrected, or is in the process of correcting, the alleged inadequacies in its plans or procedures when it receives a notice of amendment, the operator need only include this information in its written comments, or present it at a hearing conducted at the operators request. The final rule states that only after considering all material presented in writing or at the hearing may the Director determine the adequacy of the operators plans and take further action. Nevertheless, the correction of inadequate plans or procedures subsequent to an OPS inspection does not preclude the Director from making a determination that the original plans were inadequate. The information concerning the operators correction efforts will be considered by the Director in determining what further action, if any, is necessary to assure the safe operation of the pipeline facility.

These three commenters also questioned the deletion of the phrase new information from the proposed revision of 49 CFR 190.211, concerning the issues operators intend to raise when requesting a hearing. RSPA is making no changes based on this comment. The proposed revision reads: The issues may relate to the allegations in the notice, the proposed corrective action, or the proposed civil penalty amount. Because any new information must relate to the allegations in the notice, the proposed corrective action, or the proposed civil penalty amount, including new information as a specific category is unnecessary. Operators will not be precluded from providing OPS with additional information at the time a hearing is requested.

Nine commenters considered the proposed rulemaking to be unnecessary. One stated that it would result in changing operators user-friendly procedural manuals into highly technical documents containing legal jargon, thereby destroying the usefulness of these manuals. RSPA disagrees. Merely strengthening OPSs enforcement of an operators written plans and procedures should not lead to an elimination of the user-friendly format. Until now, OPSs enforcement of the adequacy of written plans and procedures has been restricted to the amendment process. Restricting enforcement to the amendment process has had the effect of limiting the enforcement tools available to the Department in addressing the quality and effectiveness of operators plans and procedures, which are the foundation of sound operations. Consequently, RSPA must have the widest latitude to assure that operators develop plans and procedures that comply with applicable safety requirements, and that operators comply with

the plans.

Several commenters stated that an operator should be subject to a civil penalty only if it refuses to adjust deficient plans or procedures. RSPA is making no changes to its proposed rule based on this comment. Subjecting operators to civil penalties should provide them with greater incentive to assure that their plans and procedures are adequate to provide safe operations of their systems and to minimize hazards in emergencies. The fact that we can always find something wrong, as one commenter argued, does not convince us that civil penalties are unnecessary; in fact, we reach the opposite conclusion. Moreover, if a civil penalty is proposed, an operators due process protections will remain substantially the same as those afforded operators under the amendment process, including prior notice and an opportunity for an informal hearing before final agency action is taken. An operator is not automatically assessed a civil penalty pending a hearing, as one commenter feared; a civil penalty is only proposed pending a hearing or other response option chosen by the operator.

One commenter requested that a paragraph be added to the amendment procedures requiring that OPS neither issue a notice of amendment nor undertake enforcement action if the operator, after a routine inspection and at the request of the Region Chief, revises its plans and procedures as requested. RSPA is not adding this paragraph. One of the stated purposes of the present regulatory action is to expand the enforcement tools available to OPS in addressing the quality and effectiveness of an operators plans and procedures; the commenters suggested paragraph would actually limit those tools because even the prior amendment procedures contained in 49 CFR 195.402(b) did not contain the requested restriction. There certainly would be less incentive for an operator to assure the quality and effectiveness of its plans and procedures before an inspection if it knew that no notice of amendment would be issued and no other enforcement action would be taken.

RSPA disagrees with one commenters argument that subjecting operators to civil penalties promotes form over substance because an operators actual operating procedure may comply with the regulations whereas its procedural manual may contain errors or omissions. Safe operation of a pipeline is dependent upon adequate and accurate manuals whose provisions are adhered to by the operators employees and contractor personnel. Allowing inadequate or inaccurate manuals to be operators guides would not further safe industry practices.

RSPA also disagrees with the comment that the proposal is not in keeping with the intent of performance-type regulations. RSPA has not added to the regulations specific requirements that must be included in an operators plans and procedures. More detailed procedures are addressed in a different proceeding (Docket No. PS 113; 54 FR 46685 (Nov. 6, 1989)). It is not necessary, however, that substantive rules in the latter proceeding become effective before the procedural rules in this one, as one commenter requested. Strengthening OPSs enforcement of the adequacy of all plans and procedures should not be delayed until specified changes in some procedures are finalized.

One commenter also claimed to be unaware of any accidents that could be attributed to deficient manuals. RSPA, however, is aware of deficiencies in operating procedures which could have contributed to accidents. For example, on December 24, 1988, Shell Pipe Line Company experienced a failure on its Ozark Pipeline System. OPSs review of Shells written manuals conducted during its investigation of the failure disclosed deficiencies relating to procedures during abnormal operations required by 49 CFR 195.402(d). These deficiencies may have contributed to the failure.

The one state agency commenting argued that moving 49 CFR 193.2017(b) to part 190 would remove that states authority to require amendments of plans and procedures because it had not adopted part 190. RSPA does not agree that moving the procedures to part 190 would remove the states authority since that authority is based on statute.

Section 13 of the Natural Gas Pipeline Safety Act and section 210 of the Hazardous Liquid Pipeline Safety Act provide that if the Secretary or appropriate state agency with responsibility for enforcement of compliance with the standards finds that an operators inspection and maintenance plan is inadequate

to achieve safe operation of pipeline facilities, the Secretary or state agency, after notice and opportunity for a hearing, has the authority to require that such plan be revised. Thus, the statute confers this authority. However, this authority may not be clearly expressed in state regulatory schemes except in part 193 as adopted by the state. The provisions contained in part 190 are only applicable to RSPAs enforcement proceedings, are not generally adopted by states and, therefore, would not be useful to the states. Therefore, RSPA will leave this expression of authority to mandate amendment in part 193 and is revising parts 192, 195, and 199 to clarify this authority in those areas.

Since the language in 49 CFR 193.2017(b) is being left in the regulations, RSPA is modifying that section to clarify which state agencies have the authority.

Finally, one commenter argued that if adopted, the proposed rulemaking should be incorporated under 49 CFR part 190, subpart B Enforcement, rather than subpart A General. The proposed 49 CFR 190.9 was contained in the general subpart; RSPA agrees that adding the proposed revision to the enforcement subpart is appropriate. The stated purpose and scope of subpart A is to prescribe the procedures, such as service of documents and subpoenas, that are applicable to enforcement proceedings under subpart B. The section added by this final rule subjects operators to enforcement sanctions and should be included in subpart B. Accordingly, in the final rule, we are adding this section to subpart B of part 190 by creating a new §190.237.

Miscellaneous

We are making minor language changes to the proposed rule for clarity and to reflect that the amendment is added to subpart B of part 190 instead of subpart A. Also, to reflect the delegation of authority from the Administrator of RSPA to the Director of OPS, RSPA is adding the latter change to §190.203(d) in two places.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Effective Date

This rule is effective August 8, 1991.

Impact Assessment

RSPA has analyzed this rule and has determined that it is not a major rule, within the meaning of Executive Order 12291. It will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. We have also determined that this rule is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034-11045 (Feb. 26, 1979)). Because the rule contains no substantive revisions that could be expected to require significant changes in operator procedures or compliance burdens, and because the economic impact will be minimal, a full regulatory evaluation is not required.

Accordingly, I certify, pursuant to 5 U.S.C. 605 regarding the Regulatory Flexibility Act, that this action will not have a significant economic impact on a substantial number of small entities.

RSPA has analyzed this action in accordance with the principles and criteria of Executive Order 12612 (52 FR 41685 (October 26, 1987)) and has determined that it does not have sufficient Federalism implications to warrant preparing a Federalism Assessment.

List of Subjects

49 CFR Part 190

Enforcement, Operations and maintenance procedures, Pipeline safety

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements

49 CFR part 193

Pipeline safety, Plans and procedures, Procedural manual

49 CFR Part 195

Operations and maintenance procedures, Pipeline safety, Procedural manual

49 CFR part 199

Drug testing, Pipeline safety, Reporting and recordkeeping requirements, Safety, Transportation

In consideration of the foregoing, title 49, Code of Federal Regulations, parts 190, 192, 193, 195, and 199 are amended as follows:

PART 190[AMENDED]

1. The authority citation for part 190 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1677, 1679a, 1679b, 1680, 1804, 2002, 2006, 2007, 2008, 2009, and 2010; 49 CFR 1.53.

2. In §190.203, paragraph (d) is revised to read as follows

§190.203 Inspections.

* * *

(d) To the extent necessary to carry out his responsibilities under the HLPFA, HMTA, or the NGPSA, the Administrator, RSPA, or the Director, OPS, may require testing of portions of pipeline facilities subject to those Acts that have been involved in, or affected by, an accident. However, before exercising this authority, the Administrator, RSPA, or the Director, OPS, shall make every effort to negotiate a mutually acceptable plan with the owner of those facilities and, where appropriate, the National Transportation Safety Board for performing the testing.

* * *

3. In § 190.211, paragraph (a) is revised to read as follows:

§190.211 Hearing.

(a) A request for a hearing provided for in this part must be accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations in the notice, the proposed corrective action (including a proposed amendment, a proposed compliance order, or a proposed hazardous facility order), or the proposed civil penalty amount. A respondents failure to specify an issue may result in waiver of his right to raise that issue at the hearing. The respondents request must also indicate whether or not he will be represented by counsel at the hearing.

* * * * *

4. In §190.233, paragraph (a) is revised to read as follows:

§190.233 Hazardous facility orders.

(a) Except as provided by paragraph (b) of this section, if the Director, OPS, finds, after reasonable notice and opportunity for hearing in accordance with paragraph (c) of this section and §190.211(a), a particular pipeline facility to be hazardous to life or property, he shall issue an order pursuant to this section requiring the owner or operator of the facility to take corrective action. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action, as appropriate.

* * * * *

5. Section 190.237 is added to read as follows:

§190.237 Amendment of plans or procedures.

(a) A Region Chief, OPS, begins a proceeding to determine whether an operators plans or procedures required under parts 192, 193, 195 and 199 of this subchapter are inadequate to assure safe operation of a pipeline facility by issuing a notice of amendment. The notice shall provide an opportunity for a hearing under §190.211 of this part and shall specify the alleged inadequacies and the proposed action for revision of the plans or procedures. The notice shall allow the operator 30 days after receipt of the notice to submit written comments or request a hearing. After considering all material presented in writing or at the hearing, the Director, OPS, shall determine whether the plans or procedures are inadequate as alleged and order the required amendment if they are inadequate, or withdraw the notice if they are not. In determining the adequacy of an operators plans and procedures, the Director, OPS, shall consider:

(1) Relevant available pipeline safety data;

(2) Whether the plans or procedures are appropriate for the particular type of pipeline transportation or facility, and for the location of the facility;

(3) The reasonableness of the plans or procedures; and

(4) The extent to which the plans or procedures contribute to public safety.

(b) The amendment of an operators plans or procedures prescribed in paragraph (a) of this section is in addition to, and may be used in conjunction with, the appropriate enforcement actions prescribed in this Subpart.

PART 192[AMENDED]

8. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 1672 and 1804; 49 CFR 1.53.

9. Section 192.603 is amended by adding a new paragraph (c) to read as follows:

§192.603 General provisions.

* * * * *

(c) The Administrator or the State Agency that has submitted a current certification under section 5(a) of the Natural Gas Pipeline Safety Act with respect to the pipeline facility governed by an operators plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

PART 193[AMENDED]

10. The authority citation for part 193 continues to read as follows:

Authority: 49 App. U.S.C. 1671 et seq.; and 49 CFR 1.53.

11. Section 193.2017(b) is revised to read as follows:

§193.2017 Plans and procedures.

* * * * *

(b) The Administrator or the State Agency that has submitted a current certification under section 5(a) of the Natural Gas Pipeline Safety Act with respect to the pipeline facility governed by an operators plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

PART 195[AMENDED]

12. The authority citation for part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2002; and 49 CFR 1.53.

13. Section 195.402(b) is revised to read as follows:

§195.402 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(b) The Administrator or the State Agency that has submitted a current certification under section 205(a) of the Hazardous Liquid Pipeline Safety Act with respect to the pipeline facility governed by an operators plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

* * * * *

PART 199[AMENDED]

14. The authority citation for part 199 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, 2002 and 2040; 49 CFR 1.53.

15. Section 199.7 is amended by revising paragraph (b) to read as follows:

§199.7 Anti-drug plan.

* * * * *

(b) The Administrator or the State Agency that has submitted a current certification under section 5(a) of the Natural Gas Pipeline Safety Act or section 205(a) of the Hazardous Liquid Pipeline Safety Act with respect to the pipeline facility governed by an operators plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety

* * * * *

Issued in Washington, DC on July 1, 1991.

Travis P. Dungan,

Administrator, Research and Special Programs Administration

[FR Doc. 91-16068 Filed 7-8-91; 8:45 am]

* * * * *

(b) The Administrator or the State Agency that has submitted a current certification under section 5(a) of the Natural Gas Pipeline Safety Act or section 205(a) of the Hazardous Liquid Pipeline Safety Act with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

* * * * *

Issued in Washington, DC on July 1, 1991.

Travis P. Dungan,

Administrator, Research and Special Programs Administration

[FR Doc. 91-16068 Filed 7-8-91; 8:45 am]

the proposed corrective action (including a proposed amendment, a proposed compliance order, or a proposed hazardous facility order), or the proposed civil penalty amount. A respondents failure to specify an issue may result in waiver of his right to raise that issue at the hearing. The respondents request must also indicate whether or not he will be represented by counsel at the hearing.

* * * * *

4. In §190.233, paragraph (a) is revised to read as follows:

§190.233 Hazardous facility orders.

(a) Except as provided by paragraph (b) of this section, if the Director, OPS, finds, after reasonable notice and opportunity for hearing in accordance with paragraph (c) of this section and §190.211(a), a particular pipeline facility to be hazardous to life or property, he shall issue an order pursuant to this section requiring the owner or operator of the facility to take corrective action. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action, as appropriate.

* * * * *

5. Section 190.237 is added to read as follows:

§190.237 Amendment of plans or procedures.

(a) A Region Chief, OPS, begins a proceeding to determine whether an operators plans or procedures required under parts 192, 193, 195 and 199 of this subchapter are inadequate to assure safe operation of a pipeline facility by issuing a notice of amendment. The notice shall provide an opportunity for a hearing under §190.211 of this part and shall specify the alleged inadequacies and the proposed action for revision of the plans or procedures. The notice shall allow the operator 30 days after receipt of the notice to submit written comments or request a hearing. After considering all material presented in writing or at the hearing, the Director, OPS, shall determine whether the plans or procedures are inadequate as alleged and order the required amendment if they are inadequate, or withdraw the notice if they are not. In determining the adequacy of an operators plans and procedures, the Director, OPS, shall consider:

- (1) Relevant available pipeline safety data;
- (2) Whether the plans or procedures are appropriate for the particular type of pipeline transportation or facility, and for the location of the facility;
- (3) The reasonableness of the plans or procedures; and
- (4) The extent to which the plans or procedures contribute to public safety

(b) The amendment of an operators plans or procedures prescribed in paragraph (a) of this section is in addition to, and may be used in conjunction with, the appropriate enforcement actions prescribed in this Subpart.

PART 192[AMENDED]

8. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 1672 and 1804; 49 CFR 1.53.

9. Section 192.603 is amended by adding a new paragraph (c) to read as follows:

§192.603 General provisions.

* * * * *

List of Subjects

49 CFR Part 190

Enforcement, Operations and maintenance procedures, Pipeline safety.

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR part 193

Pipeline safety, Plans and procedures, Procedural manual.

49 CFR Part 195

Operations and maintenance procedures, Pipeline safety, Procedural manual.

49 CFR part 199

Drug testing, Pipeline safety, Reporting and recordkeeping requirements, Safety, Transportation.

In consideration of the foregoing, title 49, Code of Federal Regulations, parts 190, 192, 193, 195, and 199 are amended as follows:

PART 190[AMENDED]

1. The authority citation for part 190 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1677, 1679a, 1679b, 1680, 1804, 2002, 2006, 2007, 2008, 2009, and 2010; 49 CFR 1.53.

2. In §190.203, paragraph (d) is revised to read as follows:

§190.203 Inspections.

• • • • •

(d) To the extent necessary to carry out his responsibilities under the HLPsA, HMTA, or the NGPSA, the Administrator, RSPA, or the Director, OPS, may require testing of portions of pipeline facilities subject to those Acts that have been involved in, or affected by, an accident. However, before exercising this authority, the Administrator, RSPA, or the Director, OPS, shall make every effort to negotiate a mutually acceptable plan with the owner of those facilities and, where appropriate, the National Transportation Safety Board for performing the testing.

• • • • •

3. In § 190.211, paragraph (a) is revised to read as follows:

§190.211 Hearing.

(a) A request for a hearing provided for in this part must be accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations in the notice,

proceedings, are not generally adopted by states and, therefore, would not be useful to the states. Therefore, RSPA will leave this expression of authority to mandate amendment in part 193 and is revising parts 192, 195, and 199 to clarify this authority in those areas.

Since the language in 49 CFR 193.2017(b) is being left in the regulations, RSPA is modifying that section to clarify which state agencies have the authority.

Finally, one commenter argued that if adopted, the proposed rulemaking should be incorporated under 49 CFR part 190, subpart B Enforcement, rather than subpart A General. The proposed 49 CFR 190.9 was contained in the general subpart; RSPA agrees that adding the proposed revision to the enforcement subpart is appropriate. The stated purpose and scope of subpart A is to prescribe the procedures, such as service of documents and subpoenas, that are applicable to enforcement proceedings under subpart B. The section added by this final rule subjects operators to enforcement sanctions and should be included in subpart B. Accordingly, in the final rule, we are adding this section to subpart B of part 190 by creating a new §190.237.

Miscellaneous

We are making minor language changes to the proposed rule for clarity and to reflect that the amendment is added to subpart B of part 190 instead of subpart A. Also, to reflect the delegation of authority from the Administrator of RSPA to the Director of OPS, RSPA is adding the latter change to §190.203(d) in two places.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Effective Date

This rule is effective August 8, 1991.

Impact Assessment

RSPA has analyzed this rule and has determined that it is not a major rule, within the meaning of Executive Order 12291. It will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. We have also determined that this rule is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034-11045 (Feb. 26, 1979)). Because the rule contains no substantive revisions that could be expected to require significant changes in operator procedures or compliance burdens, and because the economic impact will be minimal, a full regulatory evaluation is not required.

Accordingly, I certify, pursuant to 5 U.S.C. 605 regarding the Regulatory Flexibility Act, that this action will not have a significant economic impact on a substantial number of small entities.

RSPA has analyzed this action in accordance with the principles and criteria of Executive Order 12612 (52 FR 41685 (October 26, 1987)) and has determined that it does not have sufficient Federalism implications to warrant preparing a Federalism Assessment.

their plans and procedures are adequate to provide safe operations of their systems and to minimize hazards in emergencies. The fact that we can always find something wrong, as one commenter argued, does not convince us that civil penalties are unnecessary; in fact, we reach the opposite conclusion. Moreover, if a civil penalty is proposed, an operators due process protections will remain substantially the same as those afforded operators under the amendment process, including prior notice and an opportunity for an informal hearing before final agency action is taken. An operator is not automatically assessed a civil penalty pending a *hearing*, as one commenter feared; a civil penalty is only proposed pending a hearing or other response option chosen by the operator.

One commenter requested that a paragraph be added to the amendment procedures requiring that OPS neither issue a notice of amendment nor undertake enforcement action if the operator, after a routine inspection and at the request of the Region Chief, revises its plans and procedures as requested. RSPA is not adding this paragraph. One of the stated purposes of the present regulatory action is to expand the enforcement tools available to OPS in addressing the quality and effectiveness of an operators plans and procedures; the commenters suggested paragraph would actually limit those tools because even the prior amendment procedures contained in 49 CFR 195.402(b) did not contain the requested restriction. There certainly would be less incentive for an operator to assure the quality and effectiveness of its plans and procedures before an inspection if it knew that no notice of amendment would be issued and no other enforcement action would be taken.

RSPA disagrees with one commenters argument that subjecting operators to civil penalties promotes form over substance because an operators actual operating procedure may comply with the regulations whereas its procedural manual may contain errors or omissions. Safe operation of a pipeline is dependent upon adequate and accurate manuals whose provisions are adhered to by the operators employees and contractor personnel. Allowing inadequate or inaccurate manuals to be operators guides would not further safe industry practices.

RSPA also disagrees with the comment that the proposal is not in keeping with the intent of performance-type regulations. RSPA has not added to the regulations specific requirements that must be included in an operators plans and procedures. More detailed procedures are addressed in a different proceeding (Docket No. PS 113; 54 FR 46685 (Nov. 6, 1989)). It is not necessary, however, that substantive rules in the latter proceeding become effective before the procedural rules in this one, as one commenter requested. Strengthening OPSs enforcement of the adequacy of all plans and procedures should not be delayed until specified changes in some procedures are finalized.

One commenter also claimed to be unaware of any accidents that could be attributed to deficient manuals. RSPA, however, is aware of deficiencies in operating procedures which could have contributed to accidents. For example, on December 24, 1988, Shell Pipe Line Company experienced a failure on its Ozark Pipeline System. OPSs review of Shells written manuals conducted during its investigation of the failure disclosed deficiencies relating to procedures during abnormal operations required by 49 CFR 195.402(d). These deficiencies may have contributed to the failure.

The one state agency commenting argued that moving 49 CFR 193.2017(b) to part 190 would remove that states authority to require amendments of plans and procedures because it had not adopted part 190. RSPA does not agree that moving the procedures to part 190 would remove the states authority since that authority is based on statute.

Section 13 of the Natural Gas Pipeline Safety Act and section 210 of the Hazardous Liquid Pipeline Safety Act provide that if the Secretary or appropriate state agency with responsibility for enforcement of compliance with the standards finds that an operators inspection and maintenance plan is inadequate to achieve safe operation of pipeline facilities, the Secretary or state agency, after notice and opportunity for a hearing, has the authority to require that such plan be revised. Thus, the statute confers this authority. However, this authority may not be clearly expressed in state regulatory schemes except in part 193 as adopted by the state. the provisions contained in part 190 are only applicable to RSPAs enforcement

applicable to operators plans and procedures under parts 192 and 199 as well. To accomplish this, OPS proposed to move the current procedures found in 49 CFR 195.402(b) and 193.2017(b) (with appropriate modification) to a new 49 CFR 190.9, which would be applicable to all plans and procedures in Parts 192, 193, 195, and 199. OPS also proposed to strengthen its enforcement of the adequacy of these plans and procedures by subjecting operators to the assessment of civil penalties (and criminal penalties if a violation is committed knowingly and willfully), and any other appropriate sanction. Both civil penalty and criminal sanctions are available under either the NGPSA (49 U.S.C. App. 1671 *et seq.*) or the HLPsA (49 U.S.C. App. 2001 *et seq.*). OPSs enforcement of the adequacy of written plans and procedures had previously been restricted to requiring that pipeline operators amend their plans and procedures. Comments to the notice of proposed rulemaking were due on or before December 6, 1989.

Comments Received

OPS received 19 comments: one from a state agency, three from trade associations, seven from utilities, and eight from pipeline companies. Four commenters supported the proposal.

Three commenters, who suggested changes, asked that an operator be given the opportunity to present evidence of its ongoing program to correct any alleged inadequacies in its plans and procedures before the Director of OPS (Director) makes a determination concerning adequacy. RSPA is making no changes to the proposed rule based on this comment. If an operator has corrected, or is in the process of correcting, the alleged inadequacies in its plans or procedures when it receives a notice of amendment, the operator need only include this information in its written comments, or present it at a hearing conducted at the operators request. The final rule states that only after considering all material presented in writing or at the hearing may the Director determine the adequacy of the operators plans and take further action. Nevertheless, the correction of inadequate plans or procedures subsequent to an OPS inspection does not preclude the Director from making a determination that the original plans were inadequate. The information concerning the operators correction efforts will be considered by the Director in determining what further action, if any, is necessary to assure the safe operation of the pipeline facility.

These three commenters also questioned the deletion of the phrase new information from the proposed revision of 49 CFR 190.211, concerning the issues operators intend to raise when requesting a hearing. RSPA is making no changes based on this comment. The proposed revision reads: The issues may relate to the allegations in the notice, the proposed corrective action, or the proposed civil penalty amount. Because any new information must relate to the allegations in the notice, the proposed corrective action, or the proposed civil penalty amount, including new information as a specific category is unnecessary. Operators will not be precluded from providing OPS with additional information at the time a hearing is requested.

Nine commenters considered the proposed rulemaking to be unnecessary. One stated that it would result in changing operators user-friendly procedural manuals into highly technical documents containing legal jargon, thereby destroying the usefulness of these manuals. RSPA disagrees. Merely strengthening OPSs enforcement of an operators written plans and procedures should not lead to an elimination of the user-friendly format. Until now, OPSs enforcement of the adequacy of written plans and procedures has been restricted to the amendment process. Restricting enforcement to the amendment process has had the effect of limiting the enforcement tools available to the Department in addressing the quality and effectiveness of operators plans and procedures, which are the foundation of sound operations. Consequently, RSPA must have the widest latitude to assure that operators develop plans and procedures that comply with applicable safety requirements, and that operators comply with the plans.

Several commenters stated that an operator should be subject to a civil penalty only if it refuses to adjust deficient plans or procedures. RSPA is making no changes to its proposed rule based on this comment. Subjecting operators to civil penalties should provide them with greater incentive to assure that

Docket No. PS-131; Amdt. 192-68

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192, 193, and 195

[Docket No. PS131; Amdt. 192-68]

RIN 2137 AC13

**Update of Standards Incorporated
by Reference**

AGENCY: Research and Special
Programs Administration (RSPA),
DOT.

ACTION: Final rule.

SUMMARY: This final rule updates existing references to voluntary specifications and standards to reflect more recent published editions of each document. Many currently referenced editions are outdated and some are out-of-print. This final rule will enable pipeline operators to utilize current technology, materials, and practices, thereby reducing costs and enhancing economic growth consistent with the Presidents goals of regulatory review.

EFFECTIVE DATE: This final rule takes effect April 19, 1993.

FOR FURTHER INFORMATION CONTACT: Christina M. Sames, (202) 3664561, regarding the contents of this final rule; or the Dockets Unit, (202) 3664453, for copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

In a January 28, 1992, memorandum, President Bush wrote to Department and agency heads about the need to reduce the burden of government regulation. The President was concerned that regulations which do not keep pace with new technologies and innovations impose needless costs and impede economic growth.

In response to the Presidents memorandum, DOT published a notice requesting public comment on the Departments regulatory programs (57 FR 4745; February 7, 1992). Commenters were asked to identify regulations which substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, impose needless costs or red tape, or overlap or conflict with other DOT or Federal regulations. The deadline for submitting comments was March 2, 1992.

(b) If, as a result of an inspection under paragraph (a) of this section, or upon notification by any person, an operator discovers that a pipeline it operates is exposed on the seabed or constitutes a hazard to navigation, the operator shall

(1) Promptly, but not later than 24 hours after discovery, notify the national Response Center, telephone: 1-800-424-8802 of the location, and, if available, the geographic coordinates of that pipeline;

(2) Promptly, but not later than 7 days after discovery, mark the location of the pipeline in accordance with 33 CFR Part 64 at the ends of the pipeline segment and at intervals of not over 500 yards long, except that a pipeline segment less than 200 yards long need only be marked at the center; and

(3) Within 6 months after discovery, or not later than November 1 of the following year if the 6 month period is after November 1 of the year that the discovery is made, place the pipeline so that the top of the pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation.

Issued in Washington, DC on November 27, 1991.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 91-28994 Filed 12-4-91; 8:45 am]

§195.1 Applicability.

* * *

(b) * * *

(4) Transportation of petroleum in onshore gathering lines in rural areas except gathering lines in the inlets of the Gulf of Mexico subject to §195.413;

* * *

3. In §195.2, definitions of *Exposed pipeline*, *Gulf of Mexico and its inlets*, and *Hazard to navigation* are added in appropriate alphabetical order as follows:

§195.2 Definitions.

* * *

Exposed pipeline means a pipeline where the top of the pipe is protruding above the seabed in water less than 15 feet deep, as measured from the mean low water.

* * *

Gulf of Mexico and its inlets means the waters from the mean high water mark of the coast of the Gulf of Mexico and its inlets open to the sea (excluding rivers, tidal marshes, lakes, and canals) seaward to include the territorial sea and Outer Continental Shelf to a depth of 15 feet, as measured from the mean low water.

Hazard to navigation means, for the purpose of this part, a pipeline where the top of the pipe is less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water.

* * *

4. Section 195.57 is added to Subpart B to read as follows:

§195.57 Filing offshore pipeline condition reports.

(a) Each operator shall, within 60 days after completion of the inspection of all its underwater pipelines subject to §195.413(a), report the following information:

(1) Name and principal address of operator.

(2) Date of report.

(3) Name, job title, and business telephone number of person submitting the report.

(4) Total number of miles of pipeline inspected.

(5) Length and date of installation of each exposed pipeline segment, and location, including, if available, the location according to the Minerals Management Service or state offshore area and block number tract.

(6) Length and date of installation of each pipeline segment, if different from a pipeline segment identified under paragraph (a)(5) of this section, that is a hazard to navigation, and the location; including, if available, the location, according to the Minerals Management Service or state offshore area and block number tract.

(b) The report shall be mailed to the Information Officer, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

4. Section 195.413 is added to subpart F to read as follows:

§195.413 Underwater inspection and reburial of pipelines in the Gulf of Mexico and its inlets.

(a) Except for gathering lines of 4-inch nominal diameter or smaller, each operator shall, in accordance with this section, conduct an underwater inspection of its pipelines in the Gulf of Mexico and its inlets. The inspection must be conducted after October 3, 1989 and before November 16, 1992.

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section 192.1 is amended by adding paragraph (b)(3) to read as follows:

§192.1 Scope of part.

• • • • •
(b) • • •

(3) Onshore gathering of gas within inlets of the Gulf of Mexico except as provided in §192.612.

3. In §192.3, definitions of *Exposed pipeline*, *Gulf of Mexico and its inlets*, and *Hazard to navigation* are added in appropriate alphabetical order as follows:

§192.3 Definitions.

• • • • •
Exposed pipeline means a pipeline where the top of the pipe is protruding above the seabed in water less than 15 feet deep, as measured from the mean low water.
• • • • •

Gulf of Mexico and its inlets means the waters from the mean high water mark of the coast of the Gulf of Mexico and its inlets open to the sea (excluding rivers, tidal marshes, lakes, and canals) seaward to include the territorial sea and Outer Continental Shelf to a depth of 15 feet, as measured from the mean low water.

Hazard to navigation means, for the purpose of this part, a pipeline where the top of the pipe is less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water.
• • • • •

4. Section 192.612 is added to Subpart L to read as follows:

§192.612 Underwater inspection and reburial of pipelines in the Gulf of Mexico and its inlets.

(a) Each operator shall, in accordance with this section, conduct an underwater inspection of its pipelines in the Gulf of Mexico and its inlets. The inspection must be conducted after October 3, 1989 and before November 16, 1992.

(b) If, as a result, of an inspection under paragraph (a) of this section, or upon notification by any person, an operator discovers that a pipeline it operates is exposed on the seabed or constitutes a hazard to navigation, the operator shall

(1) Promptly, but not later than 24 hours after discovery, notify the National Response Center, telephone: 1-800-424-8802 of the location, and, if available, the geographic coordinates of that pipeline;

(2) Promptly, but not later than 7 days after discovery, mark the location of the pipeline in accordance with 33 CFR Part 64 at the ends of the pipeline segment and at intervals of not over 500 yards long, except that a pipeline segment less than 200 yards long need only be marked at the center; and

(3) Within 6 months after discovery, or not later than November 1 of the following year if the 6 month period is later than November 1 of the year the discovery is made, place the pipeline so that the top of the pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation.

PART 195[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2001 *et seq.*; 49 CFR 1.53.

2. Section 195.1 is amended by revising paragraph (b)(4) to read as follows:

1. The authority citation for part 190 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1677, 1679a, 1679b, 1680, 1681, 1804, 2002, 2006, 2007, 2008, 2009, and 2010; 49 CFR 1.53.

2. Section 190.229 is amended by revising paragraph (d) to read as follows:

§190.229 Criminal penalties generally.

(d) Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign, right-of-way marker, or marine buoy required by the NGPSA, the HLPSCA, or the HMTA, or any regulation or order issued thereunder shall, upon conviction, be subject, for each offense, to a fine of not more than \$5,000, imprisonment for a term not to exceed 1 year, or both.

PART 191[AMENDED]

1. The authority citation for part 191 continues to read as follows:

Authority: 49 App. U.S.C. 1681 (b) and 1808 (b); §§191.23 and 191.25 also issued under 49 App. U.S.C. 1672(a); and 49 CFR 1.53.

2. Section 191.27 is added to read as follows:

§191.27 Filing offshore pipeline condition reports.

(a) Each operator shall, within 60 days after completion of the inspection of all its underwater pipelines subject to §192.612(a), report the following information:

- (1) Name and principal address of operator.
- (2) Date of report.
- (3) Name, job title, and business telephone number of person submitting the report.
- (4) Total number of miles of pipeline inspected.
- (5) Length and date of installation of each exposed pipeline segment, and location, including if available, the location according to the Minerals Management Service or state offshore area and block number tract.
- (6) Length and date of installation of each pipeline segment, if different from a pipeline segment identified under paragraph (a)(5) of this section, that is a hazard to navigation, and the location, including, if available, the location according to the Minerals Management Service or state offshore area and block number tract.

(b) The report shall be mailed to the Information Officer, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

PART 192[AMENDED]

1. The authority citation for part 192 continues to read as follows:

deep, so that it should cost less than \$8 million to conduct the initial inspection of these pipelines as mandated by Public Law 101-599. Costs are continuing to drop as better technology is developed and underwater inspections become more common. INGAA provided information regarding the underwater inspections that have been conducted as of June 23, 1990, and assuming that this data is representative of the findings in future underwater pipeline inspections, it appears that less than 1 percent of the offshore pipelines may be exposed above the seabed. However, information is not yet available to determine the percentage of the pipelines that may be a hazard to navigation (i.e., those pipelines buried less than 12 inches). Current pipeline technology can be used in reburying pipelines. The cost of reburying a pipeline also varies significantly depending on similar variable factors set forth above.

A Regulatory Evaluation has been prepared and is available in the docket. This evaluation estimates the present value of the benefits to be \$17.6 million and the present value of the costs to be \$8.7 million. Based on the facts available concerning the impact of this final rule, I certify under Section 605 of the Regulatory Flexibility Act that they would not have a significant impact on a substantial number of small entities because small entities do not operate pipelines offshore.

Paperwork Reduction Act

The final rule requires that pipeline operators report to RSPA pipelines in the Gulf of Mexico and its inlets that are exposed or a hazard to navigation. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), these information collection requirements have been approved by the Office of Management and Budget.

The reporting and recordkeeping requirements associated with this rule were submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35. The reporting and recordkeeping approval is No. 2137-0583.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. RSPA has determined that it does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects

49 CFR Part 190

Administrative practice and procedure, Penalties, Pipeline safety.

49 CFR Parts 191 and 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends 49 CFR parts 190, 191, 192 and 195 as follows:

PART 190[AMENDED]

that an exposed pipeline is a pipeline that it operates, this should provide adequate time to notify the Coast Guard 24 hours after discovery that the pipeline is exposed or a hazard to navigation. Therefore, RSPA is not adopting this comment. This final rule has been revised to require pipeline operators to notify the National Response Center, telephone: 1-800-424-8802, rather than the U.S. Coast Guard, as was proposed in the Notice. The National Response Center is operated by the Coast Guard and will provide the information to the appropriate Coast Guard district office. This final rule requires that the report to the National Response Center include the location of the pipeline segment. The coast Guard has advised RSPA that the location should be identified by LoranC coordinates, state plane coordinates, geographic coordinates consisting of latitude and longitude in degrees, minutes, and seconds or by other equivalent methods.

Texaco and API argued that marking the pipeline in 7 days may not provide sufficient time. They recommended 30 days. RSPA does not agree. Thirty days is too long a period to leave unmarked a pipeline that is exposed or a hazard to navigation. Seven days should provide sufficient time for marking a pipeline. Therefore, RSPA did not adopt this comment.

Cost/Benefit Analysis

The City of Florence Gas System commented that they would like to see a cost/benefit analysis conducted before the regulation becomes effective. RSPA has prepared such an evaluation and it is available in the docket. This evaluation estimates the present value of the benefits to be \$17.6 million and the present value of the costs to be \$8.7 million.

Chevron believes that the RSPA estimate of \$8,000 per mile for an initial inspection is very low. They believe that \$12,000 per mile is more realistic and that the costs may rise if equipment is not available. Chevron further observed that the costs of reburying exposed pipelines were not included in the cost/benefit analysis. They estimated that this rulemaking could cost \$50 million or as much as \$100 million if grandfathered pipelines are covered by this regulation. Conversely, the Fisheries Institute states that the cost of \$8,000 per mile for an initial inspection is too high, indicating that \$7,000 is closer to the market value.

RSPA does not agree with Chevron that this rulemaking could cost \$50 million, much less \$100 million. RSPA conservatively estimates that approximately 1,000 miles of offshore pipelines will be subject to the inspection requirements. RSPA acknowledges that it is difficult to estimate the number of miles of pipeline that may be exposed or a hazard to navigation, and has used conservative cost figures as well as conservative benefit figures in developing the cost/benefit analysis. Realistic reburial costs have been factored into the analysis. The number of miles of pipelines that require reburial as a result of this initial inspection will be known and appropriately considered in any later rulemaking regarding periodic inspections. With respect to this rulemaking, these regulations were developed very narrowly in accordance with the law, and RSPA has determined that the expected benefits will exceed the expected costs.

Impact Assessment

The proposed rules are considered to be non-major under Executive Order 11591, and are not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

This proposed rulemaking is required by law. The costs of conducting the underwater inspections are now averaging less than \$3,000 per mile using recently developed technology. Some of the variables that affect the costs of conducting an underwater inspection are the amount of pipeline to be inspected, weather, mobilization costs, and location. Based on available data, there are less than 1,000 miles of offshore gas and hazardous liquid pipelines in the Gulf of Mexico and its inlets in water less than 15 feet

raised an additional issue that shrimp spawn in the spring and take several weeks to mature. They also said that oysters spawn in the spring and take several years to mature but the first several weeks are critical for survival. panhandle Eastern stated that scheduling reburial during this season may be highly detrimental to the reproduction of the shellfish.

RSPA agrees that some flexibility should be permitted for the reburial of the pipelines that are determined to be exposed or a hazard to navigation. Public Law 101-599 permits RSPA to extend the 6 months for reburial with respect to a pipeline facility for such period as is reasonable. RSPA believes that the reasons stated by some commenters particularly regarding weather conditions during the winter which could make reburial within 6 months a difficult, costly, and perhaps hazardous procedure - justify extending the 6 month period for reburial. Therefore, this proposed requirement has been amended in this final rule to allow for reburial not later than November 1 of the following year if the 6 month period is later than November 1 of the year that an operator discovers that a pipeline it operates is exposed or a hazard to navigation.

Submar, Inc. commented that the current regulations permit less cover than the 36 inches for normal excavation or 18 inches for rock excavation for offshore pipelines if it is impracticable to comply with the minimum cover requirement, and the proposed rule did not provide that flexibility. That commenter stated that protective mats could be placed over a pipeline requiring reburial that could adequately protect the pipeline. RSPA drafted the proposed rule in accordance with the law that requires reburial.

In addition, RSPA is not sufficiently familiar with the use of these protective mats. Further, the current regulations provide such an option only if it is impracticable to comply with the current cover requirements, making such an option rare. However, RSPA will consider this proposal in a subsequent rulemaking on a mandatory and systematic inspection program of offshore pipelines in the Gulf of Mexico and its inlets as required by Public Law 101-599.

Chevron commented that referencing 33 CFR part 64 as a means to mark pipelines does not provide adequate guidance for pipeline operators. Chevron wondered what minimum buoy placement interval operators should use as a guide to mark an exposed pipeline. If an interval less than one mile is specified, Chevron is concerned that an adequate supply of buoys may not exist. the GPTC commented that Coast Guard buoys are unduly restrictive and costly (about \$900) to be used for a short period of time while the pipeline is scheduled for reburial. The GPTC argued that reflective type buoys that are lower in cost should be permitted, stating that some local Coast Guard Commanders have previously demanded the use of the higher priced, lighted buoys.

RSPA does not agree that the buoys to be used to mark a pipeline should be reflective type buoys because they will only be used up to 6 months. Reflective buoys are very difficult to see at night. The coast Guard Commanders, being familiar with the offshore waters in their districts, are in a better position to determine the type of buoy that should be used in that district. Therefore, RSPA believes that the local Coast Guard Commander should specify the type of buoy in accordance with 33 CFR part 64, and should not be restricted to low cost reflective buoys. RSPA has been advised by the Coast Guard that they require yellow lighted buoys having a yellow light flashing not more than 30 times per minute. In addition, RSPA concludes that the placement of a buoy should be at the ends of the pipeline segment and at intervals of not more than 500 yards. However, if the pipeline segment that requires marking is less than 200 yards, the segment need only be marked at the center of the segment. One mile intervals, as proposed by Chevron is too far of a distance to indicate that there is an underwater hazard. RSPA has consulted with the Coast Guard concerning these requirements. The Coast Guard advises that a list of supply sources for buoys can be obtained by contacting the Commander, Eighth Coast Guard District, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396; telephone (504) 589-2944 or 589-6234.

Two industry commenters stated that reporting a pipeline to the Coast Guard within 24 hours after discovery did not provide sufficient time under certain circumstances. Since an operator must determine

that offshore pipelines must be buried under actual material covering the top of the pipe, rather than being situated in a trench of a certain depth below the natural bottom of the seabed. Tenneco argued that long accepted offshore pipeline construction practice requires jetting-in a trench capable of accommodating the pipeline at least 3 feet beneath the natural bottom of the sea. In soft and silty bottoms, currents soon fill in this trench providing actual burial cover, but where a more consolidated bottom is encountered, the trench may never silt in and the pipe is never really covered although it is adequately protected from passing vessels by the steep walls of the trench. For the purpose of pipeline burial in an offshore environment, Tenneco suggested that the concept of burial should refer to the top of the pipe being beneath the normal surrounding seabed. The API made similar arguments regarding the use of the term burial in the definition of a hazard to navigation.

RSPA agrees. The Preamble in the regulation issued in 1976 regarding burial of offshore pipeline recognized these offshore construction practices but did not adequately craft the wording of the regulation accordingly. Revisions have been made to the burial requirements in §§192.612 (b)(3) and 195.413(b)(3) and the definition of a hazard to navigation to clarify that the top of the pipeline must be a certain depth below the seabed rather than having to be buried. A revision has also been made to the definition of exposed pipeline to clarify that the top of the pipeline would have to be protruding above the seabed for the pipeline to be considered exposed.

In this regard, the NTSB recommended that seabed be defined. The NTSB recognized that the Gulf of Mexico seabed consists of soft soils or silt that make it difficult to define. However, NTSB believes that unless the term seabed is defined, pipeline operators will have no standard by which to implement requirements and OPS will have no measure by which to judge compliance.

RSPA recognizes that many offshore areas in the Gulf of Mexico do not have an easily definable seabed, but still believes that establishing a qualitative measurement of the ocean bottom, such as silt density, would be impracticable because of shifting and varying silt density on the ocean bottom. Therefore, the NTSB recommendation was not adopted.

The Department of the Interior (DOI) recommended that a hazard to navigation be defined as a pipeline less than 36 inches below the seabed in water less than 15 feet deep. DOI commented that a vessel of less than 1600 gross tons operating without a nautical chart and navigating in a manner such that its hull touches the seabed could easily cut through a natural gas or oil pipeline fully buried in 36 inches of silt of unspecified density. DOI further recommended that a pipeline should be marked until such time as the pipeline is reburied to at least 36 inches below the seabed. The NTSB also argued that pipelines be considered a hazard to navigation if not buried 36 inches because testimony at that agency's hearings indicate that commercial fishing vessels may intrude 2 or more feet into the seabed.

RSPA recognizes the hazards to pipelines that are not adequately buried in soft silt. However, RSPA believes, based on what it knows today, that it is technologically impracticable to expect that the initial 36 inches of burial be continuously maintained in light of the shifting silty seabed. RSPA believes that requiring that the top of the pipeline be at least 12 inches below the seabed provides adequate protection while recognizing the unstable offshore environment in the Gulf of Mexico. The Fisheries Institute, representing the commercial fishing industry, also recognized the difficulties of maintaining the burial of offshore pipelines, and supported requiring that pipelines remain buried only 12 inches. Commercial fishing representatives have indicated to RSPA staff engineers that intrusion of fishing vessels into the seabed would rarely exceed 12 inches because a vessel cannot be extricated from the seabed in such a situation. Therefore, this comment was not adopted.

Many industry commenters objected to having to bury the pipeline within 6 months after discovery that a pipeline is exposed or a hazard to navigation. Those commenters argued that depending on when the discovery is made, weather conditions could make reburial within that time period a difficult, costly, and perhaps hazardous procedure. These commenters stated that the summer construction season is generally recognized as the safest time for underwater work of any kind in the Gulf. Panhandle Eastern

waters less than 3 feet deep. More importantly, the law requires underwater inspections in waters less than 15 feet deep; so this comment was not incorporated.

Sections 192.612 and 195.413. The Gas Piping Technology Committee (GPTC) commented that many prudent operators of pipelines in the Gulf of Mexico have historically conducted periodic inspections of their offshore pipelines and those operators should be permitted to use an inspection conducted prior to October 3, 1989 as the inspection required in §§192.612 and 195.413, especially in an area of stable seabed conditions. RSPA does not agree. RSPA doubts that those inspections may have included determining the depth of burial of the pipelines. The language of the law is clear that only inspections conducted after October 3, 1989 can be used in compliance with the initial inspection; thus, RSPA has not adopted this recommendation.

Exxon commented that the proposed rules exclude hazardous liquid gathering lines of 4-inch nominal diameter or smaller from the inspection and suggested that a similar exclusion be provided for gas gathering lines. RSPA does not agree. While that exclusion for hazardous liquid gathering lines was provided in the law, such an exclusion was not provided for gas gathering lines. RSPA believes that all gathering lines should be handled similarly and is excluding hazardous liquid gathering lines of less than 4-inch nominal diameter only because of the exclusion in the law. RSPA does not see a reason to deviate from the law with regard to gas gathering lines of less than 4-inch nominal diameter.

Many industry commenters stated that it would be very difficult to complete the inspection by 18 months after enactment of the law, (May 16, 1992), or one year after the issuance of the regulations, whichever came first. Some industry commenters asked that the time for the initial inspection be extended to the end of the 1992 summer construction season. Transco suggested that this could be accomplished by using the provisions of the law that provide for an extension of time of 6 months, or November 16, 1992 for gas pipelines. (It should be noted that the law provides for an extension of time of one year, or May 16, 1993 for hazardous liquid pipelines.) Transco also suggested that operators who act in good faith to complete the necessary surveys in a prudent and cost effective manner, but have been unsuccessful in completing the inspection because of scheduling problems, should be afforded that consideration. This regulation, which will be effective on January 6, 1992, goes beyond the May 16, 1992 deadline. However, an extension beyond that date would be in keeping with the intent of the law where just cause exists. RSPA has participated in many forums regarding these regulations and concludes that the pipeline operators are acting in good faith, with due diligence and care, in conducting these inspections. Therefore, RSPA will utilize this provision in the law to extend the deadline for conducting this initial inspection for all pipeline operators and has made this requirement effective on November 16, 1992. Furthermore, because of the emerging development of underwater inspection technology during this period, such an extension is justified. This date for completion of the initial inspection is approximately at the end of the 1992 summer construction season in keeping with the suggestions made by industry commenters. RSPA does not see reason for extending this requirement further for hazardous liquid pipelines.

Sections 192.621(b) and 195.413(b). Several industry commenters objected to the term discovery used in proposed §§192.621(b), (b)(1), (b)(2), and (b)(3) and 195.413(b), (b)(1), (b)(2), and (b)(3). Those commenters believe that the term discovery should be changed to determines. Those commenters stated that in areas where there is a congestion of pipelines, an exposed pipeline may be discovered but time should be allowed for the operator to determine if the pipeline belongs to the operator or if it is an abandoned pipeline.

It should be noted that the proposed rule was applicable to an operator that * * * discovers that a pipeline *it operates* is exposed * * * (italicized for emphasis). Therefore, the operator must determine that an exposed pipeline it discovers is a pipeline that it operates. Therefore, RSPA does not believe that the term discover needs to be revised and has not adopted this recommendation.

Tenneco Gas commented that there is a deficiency in the existing gas pipeline safety regulations (§192.327(e)) that has been carried forward in this proposed rule. The proposed rule appears to require

(b) This part does not apply to

(2) Onshore gathering of gas *outside of* (emphasis added) * * *

(iii) Inlets of the Gulf of Mexico except as provided in §192.612 could be construed to reverse the intent of this NPRM, making gathering lines within inlets of the Gulf of Mexico subject to part 192 except the provisions of §192.612. RSPA does not interpret this regulation in the same manner as Exxon. Nonetheless, RSPA agrees that wording suggested by Exxon may be clearer and has revised this regulation in accordance with the suggestion.

Sections 192.3 and 195.2. Practically all of the industry commentators thought that the term inlets in the definition of Gulf of Mexico and its inlets in §§192.3 and 195.2 should be better defined. Many industry commentators thought that inlets could be interpreted to include rivers, tidal marshes, lakes, and canals. Public Law 101-599 was enacted to assure that pipelines in shallow offshore waters where commercial fishing vessels navigate will not pose a hazard to those vessels. In that context, the Fisheries Institute, which also commented that inlets should be better defined, attached a list where menhaden and other commercial fishing activities take place. The Fisheries Institute commented that the list was not an exhaustive list but was submitted in hope that it would help in better defining Gulf of Mexico and its inlets. The list was:

1. Fresh Water Bayou/Inter-coastal Waterway to Calcasieu River, Cameron, Louisiana.
2. Calcasieu Pass, Cameron, Louisiana.
3. Intercoastal Waterway to Morgan City, Louisiana.
4. South West Pass across Vermillion Bay, Intercoastal City, Louisiana.
5. Fresh Water Bayou, Intercoastal City, Louisiana.
6. Houma Navigation Channel/Intercoastal Waterway to Bayou Chene, Morgan City, Louisiana.
7. Houma Navigation Channel through Grand Calillon Bayou/Calliou Lake, Dulac, Louisiana.
8. Houma Navigation Canal through Cat Island Pass, Dulac, Louisiana.
9. East Pascagoula River, Moss Point, Mississippi.

RSPA is including this list in the Preamble in order to assist pipeline operators in identifying where menhaden and commercial fishing activities take place. Most industry commentators proposed that the definition be revised to be limited to inlets that are open to the sea. Many of these industry commentators also proposed that the exclusion of such inlets as rivers, tidal marshes, lakes, and canals be set forth in the regulation. RSPA agrees that the inlets must be better defined and has revised this definition in the final rule to refer to inlets open to the sea excluding rivers, tidal marshes, lakes, and canals.

It is important to repeat information set forth in the Preamble in the NPRM regarding the term mean low water. That term is used in this regulation to conform with the language used in Pub. L. 101-599. Mean low water can be considered to denote mean lower low water as used in the nautical chart datum of the National Ocean Service.

Some commentators argued that the definitions of exposed pipeline and hazard to navigation should be limited to water from 3 feet to 15 feet deep, asserting that vessels do not operate in water less than 3 feet deep or that vessels operating in such shallow waters would be incapable of damaging a pipeline. Some of these commentators also stated that it would be difficult to conduct underwater inspections in such shallow waters. Exxon proposed similar changes and suggested that a definition for shallow waters be incorporated in the definitions limiting such waters from 3 to 15 feet.

RSPA does not agree. There are locations in the offshore waters of Louisiana where the seabed deepens very slowly and 3 feet of depth may be a considerable distance out into open waters. Fishing vessels navigate in such shallow waters, especially when some of these offshore areas have silty and soft seabeds where the hulls of the commercial fishing vessels may intrude into the silty seabed and damage the pipeline. In addition, RSPA is not aware of great difficulties regarding underwater inspections in offshore

However, in accordance with the current requirements in §§192.1(b)(1) and 195.1(b)(5), this amendment would not apply to the offshore gathering of gas or hazardous liquids upstream from the outlet flange of each facility on the OCS where hydrocarbons are produced or where hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream. The Minerals Management Service (MMS) has responsibility for gathering of gas or hazardous liquids upstream from that outlet flange pursuant to a 1976 memorandum of understanding between the Department of the Interior and the Department of Transportation. It should also be noted that gathering lines do not include production flow lines. The appropriate distinction between production flow lines and gathering lines will be addressed in an upcoming NPRM proposing to revise the definition of a gathering line.

It is also important to note that for the purpose of this final rule, the term pipeline facilities, as set forth in Public Law 101-599, was not used. Pipeline facilities is defined by RSPA regulations (§§192.3 and 195.2) to include such facilities as offshore platforms that are not intended to be buried. There is no indication to suggest that such structures were intended to be addressed by the statute. Therefore, the final rule applies to pipelines which, in accordance with the definition of pipeline in §§192.3 and 195.2, means all parts of those physical facilities through which gas or hazardous liquids move in transportation, including pipe, valves, and other appurtenances attached to a pipe.

Part 191.1. A member of the TPSSC observed that currently, part 191 applies to operators of gas pipeline facilities; and yet, proposed §191.27 in the NPRM was meant to apply to operators of hazardous liquid pipeline facilities, as well as operators of gas pipeline facilities. The American Petroleum Institute (API) also commented that because part 191 has traditionally addressed natural gas pipelines, they recommended that RSPA remove the applicability of proposed §191.27 to hazardous liquid pipelines and provide a parallel provision in part 195.

RSPA agrees. RSPA had expected §191.27 to be a precursor of a future relocation of all the reporting requirements in subpart B of part 195 to part 191. However, in the meantime, proposed §191.27 in the NPRM has been adopted as applicable only to natural gas pipelines, and a new §195.57 has been inserted in subpart B of part 195 to be applicable to hazardous liquid pipelines.

Exxon commented that the location of an exposed pipeline and a pipeline that is a hazard to navigation as addressed in proposed §191.17 (a)(5) and §191.27(a)(6), respectively, may not be able to be identified according to an MMS or state offshore area and block number tract. This is due to the fact that inlets in the Gulf may not be subject to such identification. RSPA agrees and has revised §191.27(a)(5) and (a)(6) and §195.57(a)(5) and (a)(6) to require that the operator report the location of each pipeline segment that is exposed or is a hazard to navigation. In addition, if available, the location must be cited according to MMS or state offshore area and block number tract. Where an MMS or state offshore area and block number tract are not available, the location must be reported by the name of the bay or inlet or by other suitable location reference.

The Interstate Natural Gas Association of America (INGAA) noted that the Preamble stated that the definition of a hazard to navigation, i.e., where a pipeline is buried less than 12 inches below the seabed, subsumes the definition of exposed pipeline where the pipeline is protruding above the seabed. INGAA believes that separate reports should not be required. RSPA has not incorporated these two reporting requirements into one reporting requirement because in addition to the mandates in Public Law 101-599, RSPA is interested in getting information if a pipeline is exposed or buried less than 12 inches. This information will be relevant to the subsequent rulemaking on a mandatory, systematic, and, if appropriate, periodic inspection program as required by Public Law 101-599. Therefore, both terms, exposed pipeline and hazard to navigation remain in the regulations in Parts 192 and 195.

Section 192.1. Exxon found fault with proposed §191.1(b)(2)(iii). They noted that the Preamble stated that the proposed §191.1(b)(2)(iii) is intended to clarify that gathering lines in the Gulf of Mexico and its inlets will be subject to the proposed inspection, marking, and reburial requirements in §§192.612 and 195.413. They interpret that the following language proposed in §192.1 (b)(12):

and the HLPSP to require that abandoned offshore pipelines be given the same safety considerations as pipelines currently in use. RSPA, in cooperation with the Task Force, will examine the issue of abandoned offshore pipelines as part of the subsequent offshore rulemaking noted previously. However, this final rule has been limited to the NPRM which incorporates the immediate requirements in Public Law 101-599.

Chevron commented that they interpreted the rulemaking to apply to lines constructed prior to the passage of the initial pipeline safety acts, NGPSA and HLPSP. Chevron observed that up to now, these lines have been grandfathered from meeting all construction requirements of parts 192 and 195 and if this were no longer true, the applicability sections of parts 192 and 195 should be modified to clarify whether these lines are being regulated and to what degree. Public Law 101-599 requires that all pipelines located in waters less than 15 feet deep in the Gulf of Mexico and its inlets be inspected and that all pipelines that are exposed or are a hazard to navigation be subject to notification, marking, and re-burial and does not make a distinction for pipelines that were constructed prior to the promulgation of the NGPSA and the HLPSP. Therefore, these proposed regulations requiring the inspection and re-burial of pipelines in the Gulf of Mexico and its inlets, are included in subpart L of part 192 (Operations) and in subpart F of part 195 (Operations and Maintenance), which are applicable to all pipelines regardless of when they were constructed.

Tenneco Gas commented that they expect the Coast Guard will recognize that agency's responsibility in this matter, and take steps to end the prevailing practice of fishing vessels running in waters that are too shallow for the draft of the vessel. Tenneco Gas further commented that the Coast Guard has the opportunity to bring about a great advance in offshore safety by formulating and enforcing minimum fishing boat standards covering maps, instruments, operator training, operator competence, and a prohibition against fishing boats navigating in waters that are insufficiently deep for the boat draft.

The Coast Guard is discussing these issues in their Commercial Fishing Industry Vessel Advisory Committee meetings. RSPA will continue to work with the Coast Guard and that advisory committee in exploring ways that commercial fishing operators can change their fishing practices to protect their vessels from the hazards of pipelines in shallow offshore waters.

The National Transportation Safety Board (NTSB) noted that the NPRM did not include all pipelines in the Gulf of Mexico, such as hazardous liquid pipelines operating at less than 20 percent of the pipes specified minimum yield strength (SMYS) and hazardous liquid pipelines having 4-inch or less nominal diameter. The NTSB believes that future action by the RSPA must address all submerged pipelines that transport hazardous liquids based on the threat to public safety, rather than the pipelines physical properties or operating characteristics. With regard to hazardous liquid pipelines having 4-inch or less nominal diameter, Public Law 101-599 specifically excepted hazardous liquid gathering lines of this size from these requirements. With regard to hazardous liquid pipelines operating at 20 percent or less of the pipes SMYS, the current hazardous liquid pipeline safety regulations do not apply to pipelines at these low-stress levels. An Advance Notice of Proposed Rulemaking (ANPRM) issued by RSPA on October 31, 1990 (55 FR 45822) solicited comments and information for evaluation in determining whether and to what extent this exception should be removed from the regulations. If this exception of pipelines operating at 20 percent or less of SMYS is removed, the subsequent rulemaking on a mandatory and systematic inspection program of offshore pipelines in the Gulf of Mexico and its inlets as required by Public Law 101-599 would apply to such hazardous liquid pipelines.

The following additional points, set forth in the Preamble in the NPRM, bear repeating here. This final rule incorporates all of the immediate requirements of Public Law 101-599 for which RSPA is responsible. These regulations apply similarly to both gas transmission and hazardous liquid pipeline facilities, and are applicable to interstate and intrastate offshore pipelines. In accordance with the current requirements in §§192.1 and 195.1, these rules are applicable to offshore pipeline facilities on the OCS as that term is defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

initial inspection, these regulations must be expedited. Therefore, after receiving comments on the NPRM, a summary of the comments together with the NPRM were mailed to each member of the advisory committee for a vote by mail.

After receiving a summary of the comments, both advisory committees voted by mail that the NPRM rule was technically feasible, reasonable, and practicable with certain revisions suggested by some of the members. Four members of the TPSSC voted that the proposed regulations were feasible, reasonable, and practicable as published in the Federal Register. Eight members agreed, but suggested revisions. Six members of the THLPSSC voted that the proposed regulations were feasible, reasonable, and practicable, as published in the Federal Register. Five members agreed, but suggested revisions. Some of the members did not vote. All of the revisions proposed by committee members are encompassed in the comments and recommendations made by commenters to the NPRM, and the disposition of these comments is addressed below in DISCUSSION OF COMMENTS.

Discussion of Comments

RSPA received 27 comments in response to the Notice, including 13 from pipeline operators, 4 pipeline industry associations (American Gas Association, Gas Pipeline Technology Committee, American Petroleum Institute, and Interstate Natural Gas Association of America), the National Transportation Safety Board, the Department of the Interior, the National Fisheries Institute, the American Shrimping Processors Association, and comments from 3 individual members of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee. Some of the comments from pipeline companies were also signed by members of the advisory committee. RSPA appreciates comments on the NPRM provided by the members of the advisory committee. RSPA also appreciates the prompt submittal of comments considering the short comment period. The excellent comments received indicate that there was sufficient time for the commenters to prepare well-founded responses.

Miscellaneous Comments

The National Fisheries Institute commented that the Preamble to the NPRM stated that neither the RSPA, MMS, or Corps of Engineers requires that pipeline operators conduct an underwater inspection or maintain burial of offshore pipelines. The Fisheries Institute commented that while underwater inspections may not be conducted, the permits issued by the Corps of Engineers require that the depth of burial of offshore pipelines be maintained. The U.S. District Court for the Western District of Louisiana, Monroe Division, upheld that interpretation. RSPA and the Corps agree and have corrected this statement in the Preamble to this final rule.

A member of the THLPSSC raised the question of who would be responsible for inspecting abandoned pipelines. Also, the Louisiana Office of Conservation (LOC) stated that while they recognize that the accidents that occurred were caused by fishing vessels striking active pipelines, they remain concerned about the hazards to persons and property posed by pipeline facilities that have been abandoned in place and that are currently not subject to any inspection requirements. The LOC estimates that there are approximately 4,000 miles of abandoned pipelines in the offshore waters of Louisiana. The LOC commented that DOT has unquestioned authority to impose conditions for abandonment of pipelines and should require, as a pre-requisite to allowing abandonment in place, that the owners of such pipelines undertake to maintain their burial, or alternatively, remove them from the seabed.

RSPA agrees that this is a matter of concern and will reconvene the Task Force on Offshore Pipelines to consider the problems of abandoned pipelines in offshore waters. In addition, identical legislative proposals sponsored by Congressman Billy Tauzin and Senator John Breaux would amend the NPSA

facilities between the high water mark and the point where the subsurface is under 1.5 feet of water, as measured from mean low water. In accordance with Public Law 101-599, hazardous liquid gathering lines of 4 inch nominal diameter and smaller are excepted from this inspection. The Department may extend the time period for compliance with this inspection requirement for an additional period of up to 6 months for gas transmission pipeline facilities, or up to 1 year for hazardous liquid pipeline facilities. The law provides that any inspection of a pipeline facility which has occurred after October 3, 1989 (the date of the Northumberland accident) may satisfy the inspection requirements if it complies with the pertinent requirements in this final rule.

Public Law 101-599 requires the Department to establish standards by May 16, 1991, on what constitutes an exposed pipeline facility, and what constitutes a hazard to navigation. The law requires that pipeline operators report to the Department, through the appropriate Coast Guard offices, potential or existing navigational hazards involving pipeline facilities. As a result of the inspection, an operator of a pipeline facility who discovers any pipeline facility which is a hazard to navigation in water 1.5 feet deep or less as measured from mean low water, must mark the location with a Coast Guard approved marine buoy or marker and notify the Department. The law provides for criminal penalties for persons who willfully and knowingly damage, deface, remove, or destroy the marine buoy or marker. Public Law 101-599 also requires the Secretary of Transportation to issue regulations requiring each gas and hazardous liquid pipeline facility that has been inspected and found to be exposed or that constitutes a hazard to navigation, be buried within 6 months after the condition is reported to the Department.

Furthermore, Public Law 101-599 requires that not later than 30 months after enactment of the law, or May 16, 1993, the Secretary shall, on the basis of experience with the initial inspection program, establish a mandatory, systematic, and where appropriate, periodic inspection program of offshore pipeline facilities in the Gulf of Mexico and its inlets. This requirement will be addressed in a future rulemaking.

In addition, Public Law 101-599 amends the Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*), which is administered by the Coast Guard to encourage fishermen and other vessel operators to report potential or existing navigational hazards involving pipeline facilities to the Department through the appropriate Coast Guard field office. Upon notification by the pipeline operator or by any other person of a hazard to navigation, the Department will notify the Coast Guard, the Office of Pipeline Safety, other affected Federal and state agencies, and vessel owners and operators in the vicinity of the pipeline facility.

Advisory Committees

This regulatory document was twice brought before the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLSSSC). These advisory committees were established by statute to consider the feasibility, reasonableness, and practicability of proposed pipeline safety regulations.

The TPSSC met in Washington, DC on February 20, 1991 and the THLSSSC met in Washington, DC on February 21, 1991. These advisory committees informally discussed a draft NPRM, which proposed revisions to the regulations in Parts 192 and 195 regarding offshore pipelines. That draft notice considered by the advisory committees addressed the requirements in Public Law 101-599 as well as additional matters that were not included in the law but which had been addressed by the multi-agency task force formed after the Northumberland accident.

As a result of the opinion of the advisory committees, the proposed rule was narrowed to address only the immediate requirements of Public Law 101-599 and those requirements were proposed in the NPRM. The longer-term mandates of Public Law 101-599, as well as other offshore and underwater pipeline proposals that may merit consideration, will be addressed in a future proposed rulemaking.

Because the law has mandatory deadlines for issuance of the regulations and for completion of the

16, 1990) to conduct underwater inspections of pipelines in shallow waters in the Gulf of Mexico and its inlets. This law was enacted to address the consequences of recent accidents involving fishing vessels that struck pipelines in shallow waters in the Gulf.

On July 26, 1987, a fishing vessel struck and ruptured an 8-inch diameter natural gas liquid pipeline while maneuvering in shallow waters in the Gulf of Mexico off the coast of Louisiana. The released gas ignited, resulting in the deaths of two crewmen. The pipeline was originally installed in 1968 and buried onshore, parallel to the shoreline. In the intervening years, the shoreline underwent substantial erosion, and at the time of the accident, the pipeline reportedly was exposed on the seabed in open water approximately 1 mile offshore.

On October 3, 1989, a 160-foot menhaden fishing vessel, the Northumberland, struck a Natural Gas Pipeline Co. 16-inch diameter offshore gas transmission pipeline about a 1/2 nautical mile offshore in the Gulf of Mexico near Sabine Pass, Texas. Natural gas under a pressure of 835 psig was released. An undetermined source onboard the vessel ignited the gas and engulfed the vessel in flames. Eleven of fourteen crew members died as a result of the accident.

In February 1990, at the request of RSPA, a joint task force was formed, made up of five Federal agencies and two state agencies to develop solutions to the risks posed by the co-existence of pipelines and vessel operations in the Gulf of Mexico. The agencies represented were RSPA, the Minerals Management Service (MMS) of the Department of the Interior, the National Ocean Service of the National Oceanic and Atmospheric Administration, the U.S. Coast Guard, the U.S. Army Corps of Engineers, the Texas Railroad Commission, and the Louisiana Office of Conservation. A report prepared by the joint task force is available in the docket. On April 9, 1990, the RSPA sent an Alert Notice to all operators of natural gas and hazardous liquid pipelines located in offshore waters to advise pipeline operators of recurring safety problems involving marine vessel operations and to alert them that exposed pipelines pose a threat to the safety of the crews of fishing vessels in shallow coastal waters. It also advised pipeline operators to identify and correct any conditions that would violate applicable pipeline safety requirements. RSPA also sent the Alert Notice to several fishing associations to alert the commercial fishing industry to the potential hazards of exposed offshore pipelines.

The RSPA pipeline safety regulations currently require that all newly constructed gas and hazardous liquid offshore pipelines located in water less than 12 feet in depth must have a minimum of 36 inches of cover or 18 inches in consolidated rock (49 CFR 192.327 and 195.248). Newly constructed gas and hazardous liquid pipelines in offshore waters from 12 feet to 200 feet deep must be installed so that the top of the pipe is below the seabed unless the pipe is protected by other equivalent means (§§192.319 and 195.246). The MMS issues rights-of-way permits for pipelines on the Outer Continental Shelf (OCS) and requires that newly constructed pipelines be buried 36 inches (30 CFR 250.153). The Corps of Engineers issues permits for burial of offshore pipelines and normally requires that newly constructed pipelines be buried to a depth of 36 inches in water less than 200 feet deep. However, none of the three agencies currently require that pipeline operators conduct an underwater inspection of those pipelines.

Public Law 101-599

Public Law 101-599 amended the Natural Gas Pipeline Safety Act of 1968 (NGPSAX49 U.S.C. 1671 *et seq.*) and the Hazardous Liquid Pipeline Safety Act of 1979 (HLPsAX49 U.S.C. 2001 *et seq.*), which are administered by the RSPA. The law requires that not later than 18 months after enactment or 1 year after issuance of regulations, whichever occurs first, the operator of each offshore gas or hazardous liquid pipeline facility in the Gulf of Mexico and its inlets shall inspect such pipeline facility and report to the Department on any portion of a pipeline facility which is exposed or is a hazard to navigation (as those terms are defined in this final rule). Therefore, this initial inspection must be completed by May 16, 1992 or 1 year after issuance of regulations, whichever comes first. This requirement shall apply to pipeline

Amdt. 192-69; Docket No. PS 100

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS100; Amdt. 19269]

RIN AB-9

Gas Detection and Monitoring in Compressor Station Buildings

AGENCY: Research and Special Programs Administration (RSPA); DOT.

ACTION: Final rule.

SUMMARY: This final rule requires that each compressor building in a gas pipeline compressor station have a fixed gas detection and alarm system by September 16, 1996, unless the building has at least 50 percent of its upright side area permanently open, or is in an unattended field compressor station of 1,000 horsepower or less. The history of reported incidents at compressor stations shows a potential for leaking gas to accumulate undetected inside compressor buildings. The purpose of the gas detection and alarm systems is to detect mixtures of gas in air and warn persons before a mixture reaches the flammable range.

EFFECTIVE DATE: This amendment takes effect October 18, 1993.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366-2392, regarding changes to safety standards, or the Dockets Unit, (202) 3664453, for copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1982, a compressor engine in a compressor station operated by the Trunkline Gas Company in Bonicord, Tennessee began leaking natural gas. The gas accumulated and exploded in the building that housed the compressor. Three workers in the building were killed, two others were injured, and the building was severely damaged.

The National Transportation Safety Board (NTSB) investigated the accident. In its report of the investigation, issued July 14, 1983, NTSB concluded that the buildings ventilation system, which had adjustable vent louvers, had been set in a position that allowed leaking gas to accumulate in the building. Also, NTSB found that the operator had not equipped the building with a gas detection and alarm system, although it had schedule one for installation. After the investigation, NTSB made the following Safety Recommendation to RSPA:

(a) Not later than September 16, 1996, each compressor building in a compressor station must have a fixed gas detection and alarm system, unless the building is

(1) Constructed so that at least 50 percent of its upright side area is permanently open; or

(2) Located in an unattended field compressor station of 1,000 horsepower or less.

(b) Except when shutdown of the system is necessary for maintenance under paragraph (c) of this section, each gas detection and alarm system required by this section must

(1) Continuously monitor the compressor building for a concentration of gas in air of not more than 25 percent of the lower explosive limit; and

(2) If that concentration of gas is detected, warn persons about to enter the building and persons inside the building of the danger.

(c) Each gas detection and alarm system required by this section must be maintained to function properly. The maintenance must include performance tests.

Issued in Washington, DC, on September 10, 1993.

Rose A. McMurray,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 93-22552 Filed 9-15-93; 8:45 am]

Rulemaking Analyses

E.O. 12291 and DOT Regulatory Policies and Procedures: Operators have installed gas detection and alarm systems in a large number of compressor buildings during construction. In addition, many operators are retrofitting their remaining compressor buildings with such systems. The American Gas Association (AGA) estimated that operators have equipped 80 percent of their compressor buildings with gas detection and alarm systems. Retrofitting the remaining 20 percent would cost between \$6 and 12 million, AGA said. INGAA's retrofitting estimate also fell in this range.

The actual cost of complying with the final rule should be less than these industry estimates. The estimates were based on the NPRM and do not reflect exclusion from this final rule of unattended field compressor stations of 1,000 horsepower or less. Also, since many operators are already retrofitting their compressor buildings, the cost they would have incurred to do so over the next 3 years in the absence of the final rule cannot fairly be attributed to the final rule. Unfortunately, our data do not allow us to estimate the amount of either of these cost reductions.

Compared with the work already done or planned, the effort needed to install gas detection and alarm systems in the remaining compressor buildings to which the final rule applies is not large. We believe the potential threat to personnel warrants the additional expenditure. Preventing only one compressor station accident involving deaths, injuries, and serious property damage could result in savings greater than the cost of retrofitting the remaining buildings. For instance, one recent compressor station incident resulted in property damage of \$4,000,000. Although leaking natural gas was not a factor in that incident, the high property damage is indicative of the value of compressor station property. Had the incident involved several deaths and injuries, total damages would have been far greater.

Therefore, this final rule is not major under Executive Order 12291 (46 FR 13193, February 19, 1981). Also, it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

Regulatory Flexibility Act. Small entities that operate gas pipeline systems almost always receive gas from their suppliers in a state ready for further transportation without additional compression. Consequently, small entities are unlikely to have compressor buildings that are subject to the final rule. Therefore, I certify under section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this final rule will not have a significant economic impact on a substantial number of small entities.

E.O. 12612. We have analyzed this final rule under the criteria of Executive Order 12612 (52 FR 41685, October 30, 1987). We find it does not warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 192

Alarms, Compressors, Gas detectors, Pipeline safety.

For the reasons set forth above, RSPA hereby amends 49 CFR part 192 as follows:

PART 192[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section 192.736 is added to read as follows:

§ 192.736 Compressor stations: Gas detection.

would be out of proportion to the size of the station. If electricity is not available from a local utility, which the commenters suggest is often the case, operators would have to use power from other sources to run the systems. These alternative sources are not practical at remote unattended field locations, because no one is routinely present to maintain a gas generator, batteries need recharging often, and solar energy is suitable only in sunny regions.

We conclude, therefore, that for the small field stations, the proposed rule is unnecessary. Thus, the final rule excepts unattended field compressor stations of 1,000 horsepower or less.

Wall area. A pipeline operator questioned the significance of applying the proposed rule only to buildings with 50 percent or more of their wall area enclosed. This commenter said gas accumulation is more dependent upon a buildings shape or ventilation than the percentage of wall area enclosed. The commenter suggested we apply the proposed rule to any building in which a hazardous accumulation of gas could occur.

Our decision to limit the proposed rule to buildings with 50 percent or more of wall area enclosed was based on the common practice in the industry regarding the installation of gas monitoring systems in compressor buildings. In response to the ANPRM, the Interstate Natural Gas Association of America (INGAA) polled its members and found that they commonly do not install gas detection and alarm systems in semi-enclosed buildings. INGAA defined these buildings as buildings with an enclosed wall area that is less than 50 percent of the total wall area. In such semi-enclosed buildings, natural ventilation minimizes the concern about hazardous accumulations of leaking gas.

Restating this aspect of the final rule in performance terms, as the commenter suggested, would not adequately accomplish the objective of the proposed rule. The science of determining whether leaking gas could accumulate to a hazardous level in a building, considering its shape and ventilation system, is problematic. Thus, with performance language, we could have great difficulty confirming or challenging an operators decision not to install a gas detection and alarm system. Also, an incorrect decision by the operator could expose personnel and property to an unexpected, unnecessary risk. Thus, the final rule continues the specification approach used in the NPRM.

Because of possible confusion over the meaning of wall area enclosed, we have revised the language of the final rule to exclude any building constructed so that at least 50 percent of its upright side area is permanently open. Under this revised language, if a rectangular-shaped building has only three outside walls, the side without a wall is still part of the buildings upright side area. Vertical windows and doors are part of upright side area. But, if they can be closed, they would not qualify as permanently open area, even if normally left open. The roof of a lean-to is not upright side area. We believe this new language is a clearer statement of what we intended the 50-percent test to cover in the proposed rule.

Advisory Committee Review

We presented the NPRM for consideration by the Technical Pipeline Safety Standards Committee (TPSSC) at a meeting in Washington, DC on February 20, 1991. The TPSSC is RSPAs statutory advisory committee for gas pipeline safety. It comprises 15 members, representing industry, government, and the public, who are technically qualified to evaluate gas pipeline safety. The TPSSCs report on the NPRM is available in the docket of this proceeding.

The TPSSC voted unanimously to find the proposed rule technically feasible, reasonable, and practicable on condition that (1) the final rule excepts unattended field compressor stations of 1,000 horsepower or less; and (2) if the final rule prescribes a test frequency, it is the frequency at which remote control shutdown devices must be tested under §192.731(c). The TPSSCs rationale for these conditions resembled the views of commenters who argued for similar changes to the proposed rule, as discussed above. The final rule meets both conditions; it excepts the small field stations and does not prescribe a frequency for performance testing.

propose to establish a rule in 49 CFR part 195 for hazardous liquid pipelines that would be comparable to proposed §192.736. In the ANPRM we said, The Departments safety standards for hazardous liquid pipelines require that pump station buildings (which present risks similar to those presented by gas compressor station buildings) be constructed to include both ventilation and devices warning occupants of the presence of hazardous vapors (49 CFR 195.262(a)). (See 53 FR 10906.) We realize that, unlike §192.736, the rule in §195.262(a) does not apply to buildings in existence when the rule took effect, but the two rules are comparable. As part of our continuing effort to make parts 192 and 195 consistent where appropriate, we will examine the need to apply §195.262(a) to all pump station buildings.

Lead time for compliance. In the NPRM, we proposed to allow operators 2 years after publication of a final rule to install gas detection and alarm systems. Operators could use this time for planning and to obtain equipment, electrical contractors, and, where necessary, a power line.

Several pipeline operators and a trade association said that 2 years was not enough time to complete the work. Some operators have many old stations in which to install systems. These commenters also argued that 2 years would not permit orderly budgeting and scheduling of work.

Commenters suggested alternatives of 3 and 5 years as a reasonable period to fulfill the installation requirements of the final rule. In view of the comments, we believe that 3 years is a more appropriate period for achieving compliance than 2 years. Therefore, the final rule requires operators to have their gas detection and alarm systems operational not later than 3 years from today.

Processing plants. A pipeline operator asked us to clarify that the term compressor building does not include buildings that house compressors in gas processing plants. The compressor buildings to which the proposed rule applies are those in gas compressor stations used in the transportation of gas by pipeline. These are the same compressor stations that the current part 192 rules cover under §§192.729 through 192.735. Such compressor stations are normally not found in gas processing plants. For clarity, the final rule refers to compressor buildings in compressor stations.

Unattended field compressor stations of 1,000 horsepower or less. About half the industry commenters suggested we except unattended field compressor stations of 1,000 horsepower or less from the final rule. These stations typically are temporary installations in rural areas. They are designed to operate without the attendance of personnel. Operators may move the station several times over the life of the compressor, which usually is mounted on skids for that purpose. Upon each move, operators construct a new building to house the compressor. The areas in which operators use these stations usually have no electricity available from a public utility to power a gas detection and alarm system. The commenters argued that under these conditions it is not practical to install fixed gas detection and alarm systems in the buildings.

The commenters also argued that because the stations are not attended during normal operation, there is limited risk to personnel. To support this position, they noted that under §192.167(a), unattended field compressor stations of 1,000 horsepower or less are not required to have emergency shutdown systems. They said that personnel are aware of the potential for hazardous accumulations of gas in field compressor buildings and use portable gas detectors. One commenter recommended we require additional ventilation in the buildings instead of fixed gas detection and alarm systems. In light of these comments, we have reexamined the need to require operators to provide additional protection against the threat of hazardous accumulations of gas in unattended field compressor stations of 1000 horsepower or less. Based on the comments in this proceeding and the experience of our field enforcement staff, we believe the potential risk to personnel is less at these stations than at the larger permanent ones. The buildings are smaller and provide fewer places for any leaking gas to accumulate, making ventilation and the use of hand-held gas detectors more effective. The fact that personnel are not routinely present at these small stations also reduces the potential for harm.

We have also looked at whether the proposed rule is appropriate for the small field stations. Because operators would have to install a fixed system each time they move such a station, the cost of compliance

comment because the final rule governs the monitoring of compressor buildings, not their design.

Detailed specifications. The Minerals Management Service (MMS) of the United States Department of the Interior thought the language of the proposed rule was too general to be effective. MMS suggested we adopt the standards in 30 CFR 250.123(b)(9) instead. These standards apply to gas and fire detection systems on offshore production platforms. They are more specific than §192.736 regarding the types of gas detection systems that may be used and where sensors must be placed. Nevertheless, the available pipeline safety data do not suggest that the type and placement of gas systems in compressor buildings are matters in need of more detailed RSPA safety requirements.

Furthermore, a careful comparison shows that the MMS standards contain exceptions that are not in §192.736. In particular, the MMS standards require gas detection systems only in areas that are inadequately ventilated, while §192.736 requires gas detection and alarm systems without regard to the adequacy of ventilation in a building. Also, unlike §192.736, the MMS standards allow gas odorant to serve as an alternative to gas detection and alarm systems in continuously staffed areas. Section 192.736 requires gas detection and alarm systems in buildings handling odorized gas to warn personnel of accumulating gas before they enter the building. We believe the record of this proceeding shows that these exceptions in the MMS standards are not appropriate for compressor buildings covered by §192.736. Therefore, we did not adopt the MMS comment.

Downtime. One pipeline operator suggested the words, continuously monitored, in proposed §192.736(a) should be deleted to permit periodic system replacements or repairs. We did not intend to disallow these functions. Nor did we intend for operators to install redundant systems so that monitoring might continue during the downtime for maintenance. The final rule excepts the time necessary for maintenance.

Frequency of system tests. In the NPRM, we proposed to require that operators maintain their gas detection and alarm systems to function properly (proposed §192.736(b)). We also proposed to emphasize in the rule that operators must include performance tests as part of that maintenance. Although we did not propose a specific frequency of testing, we sought comments on whether the final rule should set a minimum frequency. This issue drew the most comments of all the issues commentators raised about the NPRM. Most commentators suggested minimum testing frequencies, ranging from weekly to annually. They especially preferred the latter frequency, because it is the minimum frequency at which operators must test remote control shutdown devices installed in compressor stations (§192.731(c)). In contrast, a few pipeline operators and a trade association thought the proposed maintenance rule was broad enough to require testing without including it in the language of the rule. These commentators essentially argued that maintenance would not be adequate to assure a properly functioning system unless it included periodic performance tests. One operator and a trade association urged us to allow operators to decide the appropriate test intervals for their systems. They said operators need this discretion because instruments and devices are not alike in all systems and operating conditions vary among stations.

We agree that operators should have discretion in deciding how frequently to test their systems. Gas detection and alarm systems and operating conditions vary. A uniform minimum test frequency may not be suitable for every operators system. In addition, the available safety data do not suggest that testing frequencies now in use are inadequate.

We also agree with those commentators who said that periodic performance tests are essential to an adequate maintenance program for fixed gas detection and alarm systems. Because testing is essential but is not conventionally included within the concept of maintenance, we believe the final rule should explicitly require testing. Thus, we have adopted the final rule as proposed in regard to testing.

The New York Public Service Commission recommended that we establish a weekly inspection interval for gas detection and alarm systems. We do not believe a uniform, periodic inspection interval is appropriate for the same reasons we did not adopt a uniform testing frequency.

Hazardous liquid pipelines. NTSB also thought the NPRM was deficient because we did not

first to call public attention to the need for fixed gas detection and alarm systems at compressor buildings. The RSPA record of gas pipeline accidents is replete with reported accidents involving fires and explosions at compressor stations. Viewed together, these accidents show a significant potential for harm that compliance with the final rule can diminish.

As for the adequacy of current rules, we reported in the NPRM that more than 75 percent of the comments on the ANPRM supported the installation of gas detection and alarm systems for safety. Yet, the record of this proceeding shows that up to 20 percent of gas pipeline compressor buildings do not have such systems in place. We believe this statistic confirms that the current part 192 rules are not adequate to ensure safe operation of compressor buildings.

Adjustable vents. NTSB, one of the two Federal agencies that commented on the NPRM, stated that the proposed rule was deficient because it did not address adjustable vents. NTSB essentially repeated its recommendation set forth above. It said that in compressor buildings with adjustable vents, gas detection and alarm systems should open the vents fully when sensors detect a hazardous accumulation of gas. According to NTSB, this opening would prevent small amounts of gas from accumulating to an explosive mixture. Regarding our concern (expressed in both the ANPRM and NPRM) that automatic vent opening would interfere with fire suppressants, NTSB said there would not be any interference if, after opening, the vents shut when the fire suppression system starts.

As we stated in the NPRM, the comments we received on the ANPRM suggested that operators commonly do not install gas detection and alarm systems that automatically open vent louvers upon detection of a significant accumulation of gas. Some commenters considered such systems impractical and unreliable. Others said the automatic ventilation feature is not easy to install. It requires a separate power line unaffected by the emergency shutdown system, and explosion-proof electrical equipment to guard against accidental ignition.

We also pointed out in the NPRM that the comments on the ANPRM supported our reservations about the automatic-venting aspect of NTSB's recommendation. Our primary concern was that automatic, fully open, rapid ventilation could hinder the use of the most efficient or effective fire suppression systems (e.g., Halon, CO₂) in compressor buildings. These systems operate best in enclosed environments. Another concern was that the benefit of an automatic system would be limited to small leaks, since large leaks could overcome the venting capacity. In view of the added installation costs of the systems, their potentially adverse effect on fire suppressants, the lack of use history data, and their limited usefulness, this final rule does not require that operators install automatic venting systems.

Alarm setting. Two pipeline operators commented that the words, hazardous accumulations of gas, in proposed §192.736(a) were too vague or indefinite. They suggested the rule require monitoring for the presence of gas in air at concentrations not exceeding 25 percent of the lower explosive limit (LEL) of the gas. Upon further consideration, we agree that the proposed language is not specific enough to assure that alarms will be set to warn persons of accumulating gas well before it becomes a flammable mixture. Twenty-five percent of LEL is widely used as a maximum setting to actuate alarms for this purpose. For example, under 49 CFR 193.2819, this setting applies to alarms connected to gas detection systems at liquefied natural gas (LNG) plants. In addition, almost all operators who reported installing gas detection systems said they link them to alarms that actuate at 15 to 30 percent of the LEL of natural gas, and then to emergency shutdown devices that actuate at 50 to 75 percent of LEL. Given this common practice in the industry and the existing RSPA rule for LNG plants, we believe that adopting the commenters suggested change would be in the interest of safety. We also believe existing settings that are above 25 percent of LEL can be adjusted readily to the new level. Therefore, the final rule requires that alarms be set to actuate at concentrations of gas in air of not more than 25 percent of LEL.

Building design. The New York Public Service Commission (NYPSC) suggested that we designate the final rule as §192.171(f) instead of §192.736 as proposed. This change would put the final rule among the requirements in part 192 governing the design of compressor stations. We did not adopt this

Amend 49 CFR 192.173, regarding compressor station building ventilation systems equipped with restrictive devices, to require the installation of gas detection equipment that will alert employees to hazardous gas accumulations and automatically open fully all restrictive devices when accumulations of gas are detected. (Class II, Priority Action) (P8320)

As a result of the NTSB recommendation, RSPA considered the need for safety regulations governing fixed gas detection and alarm systems in compressor buildings. We reviewed reports of incidents at compressor stations that operators had submitted under 49 CFR part 191. A significant number of these incidents appeared to involve gas leakage inside compressor buildings. Based on this finding and the Bonicord accident, we concluded that the history of incidents involving compressor buildings showed a potential for harm to pipeline workers that safety regulations could reduce.

We published an Advance Notice of Proposed Rulemaking (ANPRM) (53 FR 10906, April 4, 1988) concerning the problem of leaking gas accumulating in compressor buildings. We sought comments on alternatives to reduce the potential for personal injury and property damage. NTSBs recommendation was among these alternatives.

Thirty-six persons submitted comments on the ANPRM. More than 75 percent of these commenters supported the first alternative in the ANPRM. This alternative was to require operators to install gas detection and alarm systems in compressor buildings. Our analysis of the comments and the alternatives in the ANPRM also supported the first alternative. We decided, therefore, that fixed gas detection and alarm systems would provide the most practical and effective means to reduce the potential for harm from leaking gas accumulating in compressor buildings.

Following publication of the ANPRM, we published a notice of proposed rulemaking (NPRM) (55 FR 30724, July 27, 1990) regarding fixed gas detection and monitoring in compressor buildings. We proposed to establish a new gas pipeline safety standard, § 192.736, Compressor stations: Gas detection. This new standard would require operators to install a gas detection and alarm system in each compressor building that has 50 percent or more of its wall area enclosed. The system would have to be designed to warn persons entering or in the building of any hazardous accumulation of gas in the building. Also, under the proposed standard, operators would have to maintain the system to function properly and periodically test its performance.

Comments on NPRM

We received letters from 23 persons commenting on the NPRM. The distribution of these commenters is as follows:

State agency	1
Federal agency	2
Standards organization	1
Testing laboratory	1
Pipeline trade association	2
Pipeline operator	16

General comments. The majority of commenters either supported the proposed rule or did not protest it. A minority, however, saw no need to change the current rules, but did not oppose the concept of the proposal. These commenters said a single accident provides an insufficient basis for rulemaking. They also said the current part 192 rules are adequate because they allow operators flexibility to decide the best method for safe operations.

We do not find the arguments against rulemaking persuasive. The Bonicord accident was merely the

Amdt. 192-70; Docket No. PS 123

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS123; Amdt. 19270]

RIN 2137AB64

Leakage Surveys on Distribution Lines Located Outside Business Districts

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule requires operators of distribution lines located outside business districts to use leak detectors to carry out required leakage surveys. Instead of using leak detectors, some operators survey for leaks by looking for dead or dying vegetation, a less reliable method. The rule will provide greater assurance that operators identify all hazardous leaks during required leakage surveys.

Also, where electrical surveys for corrosion are impractical on cathodically unprotected metallic distribution lines located outside business districts, operators commonly use leakage survey data to determine whether the lines are corroding. However, under the present leakage survey standard, those data may be too old for purposes of evaluating lines for corrosion at 3-year intervals. Thus, the final rule assures that leakage survey data no more than 3 years old are used to evaluate lines of corrosion.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366-2392, regarding the subject matter of this final rule, or the dockets Unit, (202) 366-5046, regarding copies of this final rule document or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

A string of accidents due to corrosion and other causes occurred on residential service lines operated by the Kansas Power and Light Company (KPL) in Kansas and Missouri during a 7-month period of 1988 and 1989. Overall, four persons were killed and 16 were injured, with property damage exceeding \$740,000. The service lines were mostly steel lines installed by contractors of the operators customers before issuance of the gas pipeline safety standards in 49 CFR part 192.

The lines had been checked for leaks through vegetation surveys carried out by KPL's meter readers, but KPL had never used gas detectors to survey the lines for leaks. Responding to the accidents, KPL conducted a comprehensive gas detector survey that revealed 2,156 leaks in 55,213 house service lines.

KPL considered 303 of these leaks to need immediate repair.

After the KPL accidents, the National Transportation Safety Board (NTSB) recommended the following to RSPA:

- Amend the provisions of 49 CFR part 192 that allow alternatives to the use of electric surveys for identifying areas of active corrosion to require that any alternative must provide data equivalent, both in timeliness and quality, to that obtained using electrical surveys. (P9017)
- Amend 49 CFR part 192 to disallow the use of vegetation-type surveys for complying with any leakage survey requirement. (P9018)

In addition, the National Association of Pipeline Safety Representatives (NAPSR), an organization of State pipeline inspectors, has recommended that operators use gas detectors in leakage surveys on distribution lines. NAPSR believes that vegetation surveys are too imprecise to assure safety in residential areas.

Vegetation surveys are based on the assumption that a high proportion of natural gas in the subsurface environment displaces air in the soil. Lack of air inhibits the growth of vegetation, producing an effect visible on the ground. Hence, observation of dead or dying vegetation is used to infer the existence of an underground gas leak. While the vegetation survey is a well-established technique, it suffers from a number of weaknesses. At various times of the year, primarily because of seasonal, weather, or climatical conditions, the growth of vegetation is insufficient to support a proper vegetation survey. In addition, vegetation is noticeably affected only after gas has leaked at a significant rate for a significant time. Thus, vegetation surveys may not discover incipient leaks; and very small, or pinhole, leaks may not be discovered unless they increase in size.

In contrast, leakage surveys using portable gas detector equipment can be done at any time of the year. Although the sensitivity of available gas detectors varies, all equipment can detect the presence of natural gas in the atmosphere without the aid of human judgment. Consequently, the uncertainty associated with vegetation surveys is eliminated with gas detector surveys. Whenever a trained technician does a gas detector survey, the operator can assume with reasonable certainty that all hazardous leaks will be found.

Notice of Proposed Rulemaking

Because of the KPL accidents and the NTSB and NAPSR recommendations, RSPA proposed to strengthen the rule that governs leakage surveys of gas distribution lines in residential areas (§192.723(b)(2)). In a notice of proposed rulemaking (NPRM) published October 23, 1991 (56 FR 54816), RSPA proposed to require that operators use gas detection equipment in leakage surveys under §192.723(b)(2). (Operators who survey their lines for leaks more often than once every 5 years, the minimum frequency under §192.723(b)(2), could continue to use vegetation surveys for these additional leakage surveys.) At the same time, RSPA proposed to clarify §192.723(b)(2) and make it consistent with §192.723(b)(1) by replacing the phrase, outside of the principal business areas, with outside business districts.

Another proposed amendment of §192.723(b)(2) concerned cathodically unprotected metallic distribution lines that must be evaluated for corrosion under §192.465(e). Operators must evaluate these pipelines at least every 3 years to determine whether areas of active corrosion exist on the lines. Areas of active corrosion must be determined by electrical survey, or if an electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other means.

It is common practice for operators to rely on leakage surveys as an alternative to electrical surveys in complying with §192.465(e). RSPAs concern is that when only 5-year-old data collected under §192.723(b)(2) are used for this purpose, corrosion may go unchecked on distribution lines in

residential areas longer than the 3 years that §192.465(e) laws. Therefore, RSPA proposed to amend §192.723(b)(2) to require that when electrical surveys are impractical on cathodically unprotected distribution lines that are subject to §192.465(e), leakage surveys must be done at least every 3 years.

Disposition of Comments

The 56 organizations that filed comments on the NPRM are categorized as follows:

Federal agency2: NTSB, U.S. Environmental Protection Agency (EPA)
State pipeline agency6: Oregon, Kansas, Iowa, Massachusetts, Kentucky, Maryland
Trade Association3: American Gas Association (AGA), NY Gas Group, Oil Heat Task Force
Professional association1: Gas Piping Technology Committee
Leak survey business1: Southern Cross
Consultant1: ConReg Associates
Distribution operator42: Alagasco; ARKLA; Atlanta Gas Light Company; Atmos Energy Corporation; Boston Gas Company; The Brooklyn Union Gas Company; Citizens Gas and Coke Utility; Colorado Springs Utilities; The Columbia Distribution Companies; Consolidated Edison Company of N.Y., Inc.; Consumers Power Company; The East Ohio Gas Company; Entex; Equitable Resources, Inc.; Hope Gas, Inc.; Iowa-Illinois Gas and Electric Company; Laclede Gas Company; Louisiana Gas Service Company; Minnegasco; Mississippi Valley Gas Company; Montana-Dakota Utilities Co.; Mountain Fuel Supply Company; National Fuel Gas Distribution Corporation; Natural Gas Pipeline Company of America; New York State Electric and Gas Corporation; Northern Indiana Public Service Company; Northern Illinois Gas; Northern Minnesota Utilities; Northwest Natural Gas Company; Okaloosa County Gas District; Oklahoma Natural Gas Company; Pacific Gas and Electric Company; The Peoples Gas Light and Coke Company; Peoples Gas System, Inc.; The Peoples Natural Gas Company; Philadelphia Electric Company; Public Service Company of Colorado; Southern California Gas Company; Southwest Gas Corporation; Washington Gas; Willmut Gas & Oil Company; Wisconsin Natural Gas Co.

Gas Detector v. Vegetation Survey

Some 50 commenters addressed the issue of whether operators should be required to use gas detectors in leakage surveys of distribution systems outside business districts. Of these commenters, 16, including NTSB, Oregon, Kansas, Massachusetts, Maryland, NY Gas Group, Oil Heat Task Force, and 9 distribution operators, voiced general support for the proposal. Another 17 commenters, all distribution operators, supported the proposal because they now use gas detectors, either hydrogen flame ionization equipment or combustible gas indicators, or both, in their surveys.

Two distribution operators supported the proposal, but preferred that the final rule use the term instrumented leak detection equipment instead of gas detector. They said this change would allow the use of sonics for leakage surveys, a technology that does not rely on actual detection of gas. This comment is important because RSPA does not want the final rule to deter the use of advancements in leakage survey technology. In addition, §192.706, governing leakage surveys of transmission lines, requires the use of leak detector equipment. To be consistent with §192.706, final §192.723(b)(2) uses the term leakage survey with leak detector equipment instead of gas detector survey. For consistency, we also replaced gas detector survey in §192.723(b)(1) with leakage survey with leak detector equipment.

Three other distribution operators supported the proposal, but suggested we limit the final rule to buried pipe. They saw no need to include interior piping under the leakage survey requirement, stating

that leaks inside buildings are readily detectable without gas detectors. However, existing §192.723(b)(2) requires leakage surveys on interior piping that is subject to part 192. Although the NPRM did not propose to alter this requirement, RSPA does not agree that there is no need for leakage surveys on interior piping. Many people have a diminished sense of smell, and conceivably could not readily smell odorized gas escaping from a pinhole leak. Periodic interior leakage surveys protect against accidents caused by otherwise undetected leaks.

Several commenters thought the term business district should be defined in the final rule. Two of these commenters referred to the definition in the Guide for Gas Transmission and Distribution Piping Systems. One asked that we define the term to distinguish older innercity [sic] business areas from newer commercial developments. RSPA did not adopt these comments because the term business district has been used in §192.723(b)(1) since the rules inception without significant compliance difficulties.

Two commenters thought we should define gas detector survey. As discussed above, the final rule uses leakage survey with leak detector equipment instead of gas detector survey. RSPA believes this alternative term is clear and needs no definition.

Another commenter disliked the term gas detector survey because it would allow use of combustible gas indicators, a method the commenter said is not as effective as hydrogen flame ionization equipment. The NPRM did not propose to standardize the equipment operators may use in conducting leakage surveys. Rather, the purpose of the proposal was to disallow the use of vegetation surveys to meet leakage survey requirements. So any kind of equipment capable of detecting leaks in gas distribution systems may be used under the final rule.

Several commenters opposed the gas detector proposal because they favored the continued use of vegetation surveys to meet leakage survey requirements. One said that vegetation surveys are 35% effective on a single pass (compared to 85 percent for hydrogen flame ionization equipment), 5 times faster than hydrogen flame ionization equipment, and 20 percent as expensive. This commenter said vegetation surveys are reliable if run by trained personnel at frequent intervals (2 or 3 times as often as hydrogen flame ionization). Two other commenters argued that an abundance of vegetation is available for efficient scheduling and running of effective vegetation surveys. One of these commenters also said a recent trial survey with gas detectors produced only 5% more leaks than a vegetation survey, and they were of low priority.

RSPA does not find these arguments persuasive. The above statistics themselves show that vegetation surveys are less effective than leak detector equipment on a single pass over distribution lines, even when using trained personnel. Also, the savings in time and money seem to be offset by the need to run vegetation surveys more often for results as reliable as with gas detectors. This need for more frequent surveys is not compatible with the 5-year minimum frequency specified by §192.723(b)(2). Further, while vegetation is essential for vegetation surveys, abundant vegetation does not overcome these drawbacks: leaks must be inferred rather than detected, and incipient leaks need time before they visually affect vegetation. The fact that a commenter found only minor additional leaks with leak detector equipment is fortunate but not necessarily typical, as the KPL experience shows. Moreover, undetected minor leaks can grow to become hazardous.

One commenter argued against the mandatory use of gas detectors by asserting that most leaks are reported through odorization of gas. Only 10 percent or less are found by leakage surveys the commenter said. Even so, public safety demands that operators use reliable means to discover leaks not reported through odorization. Gas detectors, unquestionably, are more reliable than vegetation surveys. And our analysis shows that gas detectors can be used to meet the present leakage survey rule at minimal additional cost. Thus, RSPA believes that disallowing the use of vegetation surveys to meet that rule is reasonable.

AGA opposed the proposal on the ground that one company's results are inadequate justification to

change §192.723(b)(2). AGA also saw only minimal potential benefits from mandatory gas detector surveys, because since 1984 there have been only 57 distribution incidents caused by corrosion, with 6 deaths, 39 injuries, and \$2.35 million of property damage. However, RSPA notes that the KPL accidents were not the sole justification for proposing to change §192.723(b)(2). The NPRM was also based on an analysis of the effectiveness of vegetation surveys, on recommendations by NTSB and NAPSRL, and the fact that Kansas, Missouri, and other states have required operators to use gas detectors in residential leakage surveys. Moreover, corrosion is not the only cause of leaks on distribution lines located outside business districts. Outside force damage to pipe is a major cause of leaks, as are pipeline construction and material defects. These other causes of leaks add to the corrosion-related benefits of leakage surveys. As with corrosion, leaks from these other causes can result long after the damage or defect occurs, creating an opportunity for the operator to discover the leak during a leakage survey.

One commenter asked that RSPA exempt lines in unoccupied rural areas where steep terrain and high vegetation growth limit the effectiveness of gas detector surveys. Although leakage surveys with gas detectors may take longer in areas of steep terrain and high vegetation, RSPA does not have evidence that such surveys are less effective in those areas. Considering the allowable interval between required surveys (5 years), RSPA feels operators have ample time to survey lines in those areas with leak detection equipment. The final rule does not have the suggested exemption.

Corrosion Evaluation by Leakage Survey

Forty-two commenters addressed the issue of whether cathodically unprotected pipe subject to the 3-year electrical survey requirement of §192.465(e) should be surveyed for leaks at least every 3 years if electrical surveys are impractical. Of these commenters, 16, including NTSB, Southern Cross, Kansas, Iowa, Massachusetts, Oil Heat Task Force, and 10 distribution operators, expressed general support for the proposal. Another 7 of the 42, all distribution operators, said they supported the proposal because they now survey their unprotected lines for leaks at 3-year intervals.

Four distribution operators supported the proposal, but suggested that the proposed frequency (intervals not exceeding 3 years) be changed to read at intervals within 3 calendar years, but not exceeding 39 months. They said this change would be consistent with other part 192 requirements for periodic inspections by allowing time to cope with extreme weather conditions. RSPA agrees that in scheduling leakage surveys to comply with the rule, operators will have to consider the weather. However, 3 years should be ample time within which to schedule and conduct a survey in good weather. None of the present part 192 standards that prescribe inspections every 3 years allow more than 36 months between inspections (e.g., §192.465(e)).

Three commenters, including AGA, opposed the proposal on the ground that every 3 years is too frequent to check for leaks, given the low corrosion accident rate. They suggested we extend the 3-year electrical survey minimum frequency to 5 years to match the minimum leak survey frequency. This change, they said, would reduce compliance cost with no adverse safety approach, because it would weaken the existing rule on monitoring unprotected metallic pipelines for corrosion (§192.465(e)). This rule was established to hold down the corrosion accident rate on distribution lines. The low corrosion accident rate that has been attained with this rule is not a sufficient reason to slacken the minimum frequency of corrosion monitoring.

Four distribution operators opposed the proposal because they felt the use of 5-year old leak survey data has not caused a safety problem. One of these commenters pointed out that under §192.465(e), the use of leak history data as an alternative to electrical surveys includes data from sources besides leak surveys, such as reports from the public. Another of these commenters thought the existing §192.723(b)(2) is satisfactory because it requires surveys as frequently as necessary. Similarly,

another of the four said the use of improved leak survey techniques and reliance on corrosion and leak history are sufficient measures under §192.465(e) to insure [sic] pipeline integrity, without more frequent surveys.

RSPA did not change the final rule as a result of these comments. The available safety data are insufficient to substantiate the commenters' assertion that using 5-year old data to meet a 3-year monitoring rule has not caused a safety problem. In the absence of such information, since pipeline corrosion continues to pose a serious threat to public safety, it is reasonable to require that unprotected pipelines be evaluated for corrosion on the basis of current data. Admittedly, the other considerations the commenters mentioned compensate to some degree for the use of out-of-date leak survey data. However, in our opinion, they do not overcome the need for leak survey data that reflect the state of corrosion activity within the prescribed period of evaluation.

Five operators opposed the proposal because of the scattered nature of unprotected parts of their distribution systems. For cost effective leakage surveys, these commenters said they would have to survey areas of their systems at 3-year intervals regardless of whether the areas contain protected or unprotected lines. It would be too impractical, they said, to survey unprotected lines selectively at 3-year intervals and the remainder at 5-year intervals. One operator suggested that changing the 5-year survey requirements to 6 years would alleviate this problem.

In response to these operators, RSPA notes that under §192.465(a), protected lines must be monitored at least annually, while under §192.465(e), operators have as long as 3 years to monitor unprotected lines. Thus, distribution systems with both protected and unprotected pipelines are already subject to different intervals for corrosion monitoring. In RSPA's experience, operators have not had significant trouble in applying these different monitoring intervals to separate parts of their systems. Since the proposed 3-year leakage survey is merely a means of carrying out the 3-year corrosion monitoring requirement on unprotected pipelines, RSPA does not believe it would add to the operators' present burden of compliance with §192.465(e). Therefore, RSPA was not persuaded to alter the final rule because of the alleged impracticality of surveying different parts of a system at different rates. Moreover, the prescribed intervals under final §192.723(b)(2) are maximum times between surveys. Operators who find it more convenient to survey separate parts of their systems at compatible frequencies, such as 2 and 4 years, or at the same frequency, such as every 3 years, may do so, provided the prescribed intervals are not exceeded.

Specific Comments Requested

In the NPRM, RSPA announced that it was reconsidering the need for more frequent leakage surveys on all distribution lines outside business districts. In that regard, we requested comments on the following topics to help us decide whether to propose a 1-year minimum frequency for leakage surveys on unprotected lines and a 3-year minimum frequency on all other lines.

(1) The need to increase from every 5 years to every 3 years the minimum frequency of leakage surveys on distribution lines of any material located outside business districts.

Only four commenters supported the notion of increasing from every 5 years to every 3 years the minimum frequency required for leak surveys on portions of distribution systems outside business districts. The Oil Heat Task Force favored more frequent surveys on the ground that total reported leaks are high, and more frequent surveys would positively affect the environment by reducing methane emissions. However, EPA advised that preliminary results of a Gas Research Institute study commissioned under the Clean Air Act show that system-wide leak rates are low. AGA argued that the Oil Heat Task Force merely wants to increase the cost of gas to enlarge the market for oil.

NTSB asserted that 5 years is too long between checks for leaks on flammable gas systems in view of aging systems. The agency suggested RSPA study incident data to learn the correlation between leak

rate and age, type of pipe and other characteristics. NTSB then said leak survey frequency should be set according to these correlations. One other commenter also said leak survey frequency should be based on age, material, leak history, and soil characteristics.

AGA opposed the idea of an increased frequency, saying an increase is not likely to have a beneficial effect given the low leak rate from corrosion since 1984. AGA foresaw minimal benefits but a significant increase in costs.

The large majority of commenters on this issue opposed the increase, saying it is not justified and would not be cost beneficial. Numerous commenters said a minimum 5-year frequency is sufficient for cathodically protected steel pipe and plastic pipe, because these pipes experience relatively few leaks. Another commenter who opposed an increase argued that gas detectors eliminate the need for more surveys. Still another commenter noted that effective cathodic protection and odorization programs make more frequent surveys unnecessary. One commenter who expressed opposition said its existing leak survey and replacement program was satisfactory, while another commenter stated its opposition succinctly: expensive, impractical, and unnecessary.

One commenter who argued a minimum 3-year rate was unjustified noted that the KPL incidents involved old, customer-owned, unprotected lines that had been vegetation surveyed by meter readers. This commenter said the KPL evidence showed a need for gas detector surveys, but not more frequent surveys. More frequent surveys, this commenter said, should be tied to high leak rates, as from corrosion, deteriorating couplings, or construction defects. Another commenter similarly said that a frequency of more than 5 years should be based on need.

(2) The need to conduct leakage surveys at least annually on cathodically unprotected metallic distribution lines that lie outside business districts and on which electrical surveys are impractical.

The Oil Heat Task Force supported the notion of annual surveys on unprotected steel lines because of what the commenter considered a large number of leaks annually across the nation.

Three other commenters supported annual surveys to help combat the effects of corrosion on old unprotected lines and prevent multiple leaks from existing for up to 5 years between surveys. An additional commenter supported the increase because it surveys annually now.

One commenter supported annual surveys, but only in areas of high leakage.

Most who commented on the issue were opposed to the suggested increase in leak survey frequency, saying it lacked corresponding safety benefits. Many said its too impractical to schedule more frequent surveys on unprotected parts of a system, since cathodic protection can vary by area or street. In some cases, these commenters said, unprotected services are randomly scattered over a city. The suggested increase would cause whole areas or systems to be surveyed annually without sufficient cause.

One commenter who saw no benefit said older systems are the source of corrosion leaks. These systems, the commenter said, have already been surveyed many times and possible areas of corrosion are protected or replaced.

Two other commenters who opposed the increase said there would be no corresponding benefits because corrosion incidents can occur shortly after a survey.

(3) How would such an increase (in survey frequency) affect the present costs of conducting leakage surveys on distribution lines in small and large systems?

About 15 commenters gave estimates ranging from \$140,000 to \$4 million a year per operator if the 5 year frequency were increased to 3 years. The range of estimated cost increases for surveying unprotected lines annually was from \$66,000 to \$19 million a year per operator. These estimates covered the costs of equipment, personnel, and training.

(4) [What] benefits would result from such rules. Information concerning accidents that operators might have avoided had they surveyed pipelines for leaks more frequently would be helpful.

Only a few commenters responded to this inquiry. None saw any benefit to increasing the survey

frequencies. Some of the reasons were: Low corrosion accident rate; lack of corrosion accidents and system difference from KPL situation; know of no accidents that would have been avoided had survey been every 3 instead of every 5 years; most lines plastic, little likelihood of accident avoidance through increased leak survey frequency.

Conclusion

Based on our review of the information submitted, we have concluded that the number of accidents that might be prevented by surveying at the proposed increased frequencies is uncertain. In addition, the current safety data for the nation's population of gas distribution lines are not sufficient to determine if a correlation exists between leak rates and pipe age, material, or other characteristics. Also, state pipeline safety agencies commonly impose more frequent survey requirements on individual distribution lines that are found to pose an unusual risk. Under these circumstances and given the need to learn the effect of the final rule on leak rates, we are not at present considering any further amendment of the leak survey frequency rule.

Advisory Committee

As part of this rulemaking proceeding, RSPA obtained advice from the Technical Pipeline Safety Standards Committee (TPSSC) on the technical feasibility, reasonableness, and practicability of the proposed rule. The TPSSC is a statutory advisory committee comprised of 15 members, representing the natural gas industry, government, and the general public.

The TPSSC met in Washington, DC on March 11, 1992, and discussed the NPRM. The TPSSC voted for the proposed rule 10 to 1, with 1 member abstaining. A suggested revision concerning a typographical error in the text of the proposed rule has been corrected. The transcript and report of the meeting are available in the docket.

Rulemaking Analyses

E.O. 12866 and DOT Regulatory Policies and Procedures

RSPA has concluded that the amendment to §192.723(b)(2) is not a significant rule under Executive Order 12866. Also, it is not a significant regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

RSPA believes that the final rule will add minimally to the average compliance expense of the present rule. With respect to requiring the use of leak detectors, first, operators of gas distribution systems already have the equipment. They use portable gas detectors in business districts and to check enclosed spaces for gas leaks. Second, in leakage surveys outside business districts, most operators already use gas detectors for mains, because they generally lie beneath paved areas where vegetation surveys are inappropriate. Also, for service lines in these areas, many operators are voluntarily using gas detectors instead of vegetation surveys, and some State laws require operators subject to State jurisdiction to do so. Third, gas detector equipment is easy to use. Personnel that operators have trained to do vegetation surveys will need only slight, if any, additional training to use the equipment. Finally, although the survey process will take longer with leak detectors, any resulting additional costs will be mitigated by the period between surveys (maximum interval is 5 years) and the ability to conduct surveys with leak detectors any time of the year.

The benefits of requiring the use of leak detectors in leakage surveys are prevention of deaths, injuries, and property damage that might otherwise occur when hazardous gas leaks go undetected in

residential neighborhoods. As an example of these potential benefits, the NPRM discussed the results of leak detector surveys in Kansas City, Missouri. Following a string of residential accidents in which four persons were killed and 16 were injured, with property damage exceeding \$740,000, the local gas company conducted leakage surveys with leak detector equipment. Until then the company had relied on vegetation surveys by meter readers to discover previously undetected gas leaks. The leak detector surveys revealed a large number of previously undetected hazardous leaks. For instance, during one period, leak detector surveys revealed 2,156 leaks in 55,213 house service lines, of which the gas company considered 303 leaks to need immediate repair. Had these leak detector surveys been conducted earlier, many of the Kansas City accidents might have been prevented by timely repair of the leaking lines. The final rule should achieve similar benefits nationwide where operators are not using leak detector equipment to conduct leakage surveys.

With respect to surveys of certain unprotected metallic lines at 3-year intervals, the final rule will merely assure that when operators use leakage data to evaluate these lines for corrosion the data are not less timely than what §192.465(e) intends for that purpose. RSPA did not attribute any additional compliance costs to this aspect of the final rule because the use of timely data is an inherent requirement of the existing §192.465(e).

RSPA believes the final rule does not warrant a more detailed evaluation of its impact. The comments on the NPRM and the advice of the TPSSC are consistent with this view.

Regulatory Flexibility Act

Based on the facts available concerning the impact of this final rule, I certify under Section 605 of the Regulatory Flexibility Act that it will not have a significant economic impact on a substantial number of small entities.

E.O. 12612

RSPA has analyzed this final rule under the criteria of Executive Order 12612 (52 FR 41685, October 30, 1987). We find it does not warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends 49 CFR part 192 as follows:

PART 192[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. In §192.723(b)(1), the words A gas detector survey are removed and the words A leakage survey with leak detector equipment are added in their place.
3. Section 192.723(b)(2) is revised to read as follows:

§192.723 Distribution systems; Leakage surveys and procedures.

* * *

(b) * * *

(2) A leakage survey with leak detector equipment must be conducted outside business districts as frequently as necessary, but at intervals not exceeding 5 years. However, for cathodically unprotected distribution lines subject to §192.465(e) on which electrical surveys for corrosion are impractical, survey intervals may not exceed 3 years.

Issued in Washington, DC, on October 14, 1993.

Rose A. McMurray,

Acting Administrator for Research and

Special Programs Administration.

[FR Doc. 93-25980 Filed 10-21-93; 8:45 am]

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Docket No. PS-113; Amdt. 192-71, 195-49

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

**[Docket No. PS-113; Amendment 192-71, 195-49]
RIN 2137-AB44**

Operation and Maintenance Procedures for Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures to be followed in the operation and maintenance (O&M) of gas pipeline facilities. This action amends current standards by requiring regulated gas pipeline operators to include detailed procedures regarding normal and abnormal operation, maintenance and emergency-response activities in their O&M manual. Furthermore, operators are required to review and update their O&M manual each calendar year. Finally, this final rule requires that regulated gas and hazardous liquid pipeline operators prepare and follow procedures to safeguard personnel from the hazards associated with the unsafe accumulation of vapor or gas in excavated trenches.

EFFECTIVE DATE: This final rule takes effect February 11, 1995, however, §§192.605(b)(9) and 195.402(c)(14) become effective March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Jack Willock, (202) 366-2392, concerning the contents of this final rule, or the Dockets Unit, (202) 366-4453, regarding copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION

Background

The Research and Special Programs Administration (RSPA) issued a Notice of Proposed Rulemaking (NPRM) on November 6, 1989 (54 FR 46685) inviting comment on proposed amendments to Part 192. The amendments were intended to clarify and delineate gas pipeline operation and maintenance (O&M) procedures, thereby reducing the likelihood of failures and providing a better basis for personnel training.

The rulemaking was prompted by a RSPA Task Force investigation of four incidents by a major transmission company in a two year period. The incidents caused 10 deaths, 36 injuries and significant property damage. The Task Force examined the company's O&M procedures, and those of five others, all operating in Kentucky where three of the four incidents occurred. It concluded that RSPA should revise §192.605, Essentials of operating and maintenance plan, to provide more guidance for operators in O&M procedures (similar to §192.615 regarding emergency plans, and §195.402 regarding liquid

pipeline procedural manuals). The NPRM also proposed new requirements under Parts 192 and 195 relating to the safety of personnel in trenches.

Comment Summary

RSPA received 56 comments on the notice from one city, four states, one Federal agency, five industry associations, and 45 gas transmission and distribution companies. The government affiliated commenters generally agreed with the proposed rules. The industry associations and companies supplied both general and specific comments against portions of the rulemaking. Since issuance of the NPRM, industry opposition to portions of the rule has significantly decreased. Many regulated entities have unilaterally moved to adopt similar O&M procedures in anticipation of this final rule. A topic by topic discussion of the substantive comments and RSPA responses to those comments follows.

Comments on Parallel Regulations: Four industry associations and 16 pipeline operators argued against RSPA's goal to make the regulations governing gas and liquid O&M procedures parallel each other. Several stated that significant differences exist in the operating characteristics and physical properties of natural gas and hazardous liquids that affect the potential public safety risk posed by a pipeline leak. Those opposing the rule pointed to the physical property difference between gas and liquids, and noted that liquids tend to "spread out" and pollute the environment while gases tend to vent harmlessly into the atmosphere. They said a natural gas leak would affect the immediate vicinity of the pipeline while a hazardous liquid leak could spread over wide areas and cause considerable environmental damage.

Response: RSPA believes that parallelism should be maintained between the O&M procedure requirements of Parts 192 and 195. The existence of two separate sets of regulations is an acknowledgment of the distinctions between gas and liquid pipelines. However, RSPA believes that the O&M similarities vastly outnumber the differences, and that compliance, particularly for operators who have both liquid and gas pipelines, is enhanced by making the two regulations reasonably similar while recognizing the technical distinctions between gas and liquid pipelines. RSPA agrees with the commenters that liquids have the potential to cause widespread environmental damage by pollution, but also believes that, under appropriate conditions, natural gas leaks and explosions may also have far reaching effects on property and life.

Comments on General Provisions (Proposed §192.603(b)): RSPA received comments from 2 operators objecting to proposed §192.603(b) which requires operators to keep records necessary to administer the procedures established under §192.605.

Response: Proposed §192.603(b) is merely a restatement of a portion of existing §192.603(b). Section 192.603(b) is adopted as proposed.

Comments on O&M Manuals (Proposed §192.605(a)): Two industry associations and 15 operators recommended that RSPA not specify those written procedures that operators must keep in their O&M manual. Companies currently have Operation and Maintenance Manuals, Emergency Manuals, Plumber Manuals, Leak Control Manuals, Corrosion Manuals and other manuals containing information vital to pipeline operation. Operators have, throughout the years, prepared manuals for their systems documenting procedures appropriate for the specific needs of that system. They stated that a requirement to combine these documents into a single volume would create an oversized, impractical and unwieldy manual.

One respondent stated that requiring all companies to prepare procedures for each of the requirements of subparts L and M would be wasteful since many procedures in these subparts only apply to certain operators.

One company objected to the requirement proposed in §192.605(a) that the manual be prepared before initial operation of a pipeline system. It cited, among other things, that contract terms might be breached, and that the financial health of both small producers and pipeline companies could be jeopardized.

Response: RSPA did not intend the proposed O&M manual to be an unwieldy single volume, or binder. Although, as proposed, the final rule requires each operator to incorporate its O&M procedures for each pipeline system into a single manual, this manual may be a comprehensive set of cross-referenced volumes set up according to functional subjects. Operators are expected to maintain a complete set of the volumes of the comprehensive reference manual at one location. Copies of parts of the manual, containing the information pertinent to particular functions or facilities in a system, must also be kept wherever needed for field operations. We propose to consolidate and reorganize relevant procedures, existing in most cases, into a comprehensive reference for use by operating personnel.

RSPA requires operators to prepare O&M procedures only for those pipeline facilities within their system. For example, it would not be necessary to prepare compressor startup procedures if the company has no compressors. The procedures should be clear, straightforward and applicable to the company's system.

RSPA strongly believes that a manual should be prepared prior to commencing initial operation of a pipeline. Under normal circumstances, long lead times are required for a company to obtain regulatory approval to construct and commence operating a pipeline. This should allow operators sufficient time to prepare the required documents in anticipation of pipeline startup. The operation of a pipeline without O&M procedures would be unsafe, both for those operating the pipeline and for the public.

Some operators stated concern that they would be required to maintain a manual for each of the many pipelines that they operate. One manual is sufficient as long as all of an operator's system is addressed. Section 192.605(a) is adopted as revised.

Comments on Standards: Six pipeline operators expressed concern about what they regard as a trend toward specification standards rather than performance standards. They contend that a change to specification standards to facilitate enforcement of the regulations would be more than offset by a reduction in flexibility of the operator to operate its system, and could consequently reduce pipeline safety.

Response: The proposed rule was not written in specification, or how-to-do-it fashion. Rather, the proposed rule used performance language which would require that gas pipeline operators maintain O&M procedures on specific topics. We are providing a list of required items that must be included, but operators can determine how best to do so for their particular system, so long as it provides for safe maintenance and operations.

Written procedures on those specific topics are essential to safe operation and maintenance of a pipeline. Procedures of a general nature provide little guidance when needed. When used properly by trained personnel, the specific procedures should have a positive effect on pipeline safety. This

rulemaking is based on the existing standard, which is not sufficiently detailed to assure that prompt and appropriate actions are taken by operators when necessary. The proposed standards are specific, and this specificity provides the operator with more reliable procedures to follow when conducting operations and maintenance, and in situations where an abnormal situation or emergency occurs.

Comments on Applicability to Distribution Pipelines: Six distribution companies argued that accidents which occur on transmission lines do not create a need for changes at the distribution level, where the risks are different. They said rules applying to a single cross country transmission pipeline do not necessarily apply to complex distribution systems, and that distribution systems should be excluded from this rulemaking.

Response: RSPA believes that all gas operators regulated by Part 192 should be subject to rules designed to provide safety for gas pipelines through written operating, maintenance and emergency procedures, supplemented by appropriate personnel training. Both transmission and distribution systems transport the same hazardous substance, flammable gas. Distribution systems operate in highly populated areas, at times performing with operating pressures equalling those of transmission lines, thereby bringing corresponding risks to the public. Accordingly, distribution systems are not excluded from this rulemaking. However, the final rule sets down different requirements for transmission and distribution lines so that only relevant procedures are prescribed.

Comments on Corrosion Control (Proposed §§192.453 and 192.605(b)(2)): Two pipeline industry associations and 7 pipeline operators stated that there is no benefit to including the details of designing and installing cathodic protection systems in an O&M manual.

Response: Pipeline corrosion control is a pipeline maintenance function. As a maintenance function, design of corrosion control systems is appropriate for inclusion in an O&M manual. Operators currently are required to keep these procedures under §192.453. The final rule requires that these procedures be consolidated with other procedures involving O&M functions in a single manual. Sections 192.453 and 192.605(b)(2) are adopted as proposed.

Comments on Construction Records, Maps, and Operating History.

(Proposed §192.605(b)(3)): One industry association and 11 gas pipeline operators objected to proposed §192.605(b)(3) which would require operators to make construction records, maps, and operating history available to appropriate O&M personnel. They find no benefit in changing the rule, as the information is already available to operating personnel.

Response: RSPA believes that it is essential for operators to have established, written procedures to insure that their employees have information (maps and operating history records) necessary for them to conduct safe operations. As an example, personnel conducting pipeline operations need direct access to maps, construction records and operating history records without delay when emergencies arise. The rule will have little effect on most companies, because they currently supply their employees with such records, or have procedures in place to make the records available. The language of §192.605(b)(3) is adopted as proposed.

Comments on Gathering Data and Reporting Incidents (Proposed

§192.605(b)(4)): RSPA proposed under §192.605(b)(4) that operators prepare procedures for gathering data needed to report incidents under 49 CFR Part 191 in a timely and effective manner. Two industry associations and 10 gas companies stated that requirements for gathering information and reporting

natural gas incidents are contained in 49 CFR Part 191 and that proposed §192.605(b)(4) is redundant.

Response: The proposed rule and Part 191 are not redundant because Part 191 does not currently require operators to prepare and follow written procedures for collecting data to be submitted in Part 191 reports. The requirement is adopted as proposed.

Comments on Immediate Response Areas (Proposed §§192.605(b)(5) and (6)): Comments were received from one state regulatory agency, three industry associations, and 17 gas companies regarding the proposal to require operators to identify areas requiring immediate response if a failure or malfunction occurs. Immediate response could prevent serious consequences or hazards in case a facility fails or malfunctions. Except for two gas companies who suggested revisions and clarification, all those commenting opposed the proposed rules.

The state agency and several companies argued that the class location system of Part 192 (which classifies pipelines by population density) is far superior to the immediate response concept of Part 195 for recognizing and reacting to potential hazards along the pipeline route. They contend that because the class location system requires the operator to follow more stringent safety practices in higher risk areas, the potential hazards along a line are reduced by such practices as lower pipe stress levels, more frequent patrols, closer sectionalizing valve spacing, and more frequent leak surveys.

Most of the companies said that any failure or malfunction in their system required immediate response since the severity of an incident is not known until an investigation is made by trained employees. For these companies, a change in the rules is unnecessary. Further, they felt the proposed rules may be counterproductive since they imply that nonlisted locations may not need careful monitoring.

Response: A gas pipeline's class location is Class 1, 2, 3, or 4 depending on the population density in a class location unit, which is an area one mile long by 220 yards (1/8 mile) on either side of the line (§192.5). The stress level rules (§§192.111 and 192.611), the sectionalizing block valve rule (§192.179), the patrolling rule (§192.705), and the leakage survey rule (§192.706) each require companies to take more stringent precautions as class location, or population density increases. Pipelines in densely populated areas must be operated at lower hoop stress, patrols must be more frequent, sectionalizing block valves must be more densely spaced, and leak surveys must be taken more frequently in order to provide more protection for the public. The class location system requires companies to identify areas where more people are at risk if an incident occurs.

The immediate response identification concept is unnecessary and inappropriate for gas pipelines, since higher risk areas are already identified by existing class location requirements. Also, gas distribution companies are located in developed areas and it would be difficult to identify locations not requiring immediate response.

Accordingly, based on the comments received, and the reasoning stated above, proposed §§192.605(b)(5) and (6) are removed from this rulemaking.

Comments on Starting and Shutting Down Pipelines, Compressor Stations, and Compressors (Proposed §§192.605(b)(7), (8), and (9)): RSPA received 17 comments on proposed §§192.605(b)(7), (8), and (9) which would require that operators have written procedures relative to the startup and shutdown of

pipelines and compressor stations and maintenance of compressor stations. All who commented on the proposals, including a state agency, opposed or recommended revision of the proposed rules. Several operators objected to proposed §192.605(b)(7) because existing regulations, §§192.195, 192.199, 192.201, 192.731, 192.739, and 192.743, require that overpressure protection equipment be installed and working properly. These standards prevent the maximum allowable operating pressure (MAOP) from being exceeded due to pressure control failure, or during startup operations.

Five of those commenting suggested that distribution systems are not started up or shut down in the manner they inferred from the proposal since many systems do not have compressor stations. Others commented that proposed §§192.605(b)(7) and 192.605(b)(9) are virtually the same since starting up and shutting down a pipeline is synonymous with starting up and shutting down compressor units. Several contended that procedures for operating compressors should be posted at the unit, and do not belong in a manual. Others stated that the rulemaking should be limited to transmission systems, and not apply to distribution systems.

Response: RSPA believes that specific written procedures are essential for the safe operation of a system as complex as a gas pipeline. This view was addressed previously in the discussion on Standards. The existing regulations, §§192.195, 192.199, 192.201, 192.731, 192.739, and 192.743, are safety standards related to the design and maintenance of relief devices to prevent overpressuring of gas pipelines.

Proposed

§§192.605(b)(7), (8), and (9) would require written procedures to follow when operating these devices.

RSPA understands that some distribution systems do not have compressors. If a system does not have compressors, it does not need compressor start up and shut down procedures.

Also, we agree with the commenters who stated that specific procedures for operating individual compressors should be posted at the engine control panel for each unit. RSPA understands that operating procedures vary from compressor to compressor, depending upon the type and model of compressor. Therefore, the final rule requires that the manual contain specific procedures regarding safety and operation that are applicable to the compressor being used. Proposed §§192.605(b)(8) and (9) are merely recodification of existing §§192.733 and 192.729, respectively. Proposed §§192.605(b)(7), (8) and (9) are adopted as final §§192.605(b)(5), (6) and (7), respectively.

Comments on Review of Operator Personnel (Proposed

§192.605(b)(10)): Three industry associations and 16 gas pipeline operators disagreed with proposed §192.605(b)(10). In this section, RSPA proposed that gas operators establish procedures to review periodically the work personnel do under normal O&M procedures to see if those procedures are effective, and to correct those procedures found deficient. Six of those commenting recommended that this proposed rule be removed since training and qualification of personnel is the topic of another rulemaking (Pipeline Operator Qualifications; 52 FR 9189, March 23, 1987). Five commenters stated that O&M manuals are a reference for trained employees and should not be used as a training manual, which should be more detailed and job specific. Four commenters stated that "periodically" is vague and needs further clarification.

Response: Like existing §195.402(c)(13), RSPA intended that gas operators periodically review their O&M procedures and correct any deficiencies found in those procedures. The O&M manual prescribes

actions that trained employees must follow to do specific tasks. In many cases a manual must describe those actions in detail to assure that personnel perform functions completely and correctly. Personnel are trained and tested to carry out the procedures which the manual prescribes.

RSPA did not intend this provision to further compel correction of deficiencies in the knowledge and skills of personnel to carry out the procedures. That requirement will be included in a separate regulation (See Pipeline Operator Qualifications; 52 FR 9189, March 23, 1987). No commenter disagreed with the fundamental purpose of the proposal.

The regulation requires periodic review to allow operators flexibility in setting the intervals between reviews of their O&M procedures. As circumstances and job functions vary among operators, so would the frequency at which procedures are reviewed. RSPA requires that each operator's O&M procedures specify the time between reviews or the circumstances that dictate a review in implementing proposed §192.605(b)(10).

Section 192.605(b)(10) has been rewritten to reflect these concerns and has been adopted as final §192.605(b)(8).

Comments on Operating Pressures for Class Location (Proposed §192.605(b)(11)): In the NPRM, RSPA proposed to transfer the existing §192.605(e) to this section. Existing §192.605(e) requires gas operators to establish procedures for periodic inspections of operating pressures to see that they conform to class locations. Nine gas companies objected to proposed §192.605(b)(11), stating that it is redundant or unnecessary.

Response: Commenters correctly pointed out that proposed §192.605(b)(11) would duplicate proposed §192.605(b)(1) and existing §§192.609, 192.611 and 192.613. Each of these sections requires operators to take some form of action to conform their pipeline operations to the proper class location. Accordingly, proposed §192.605(b)(11) has not been adopted.

Comments on Personnel Safety in Trenches (Proposed §192.605(b)(12) and 195.402(b)(14)): Three industry associations and 20 gas operators recommended revision of proposed §§192.605(b)(12) and 195.402(b)(14). RSPA proposed that operators have written procedures for using precautions, and equipment to protect personnel, in excavated trenches from hazardous accumulations of vapor or gas. Most of the commenters stated that the proposed standard is too specific, and should be rewritten in general performance language covering excavation as well as other O&M safety tasks.

Most of the commenters expressed concern that RSPA and Occupational Safety and Health Administration (OSHA) rules will overlap and that they will be required to comply with duplicate regulatory requirements.

Response: Expansion and rewriting of the rule in general performance language to extend to O&M safety related tasks other than safety during excavation would exceed the scope of the proposal. The proposal was limited to protecting personnel in trenches from hazardous vapors or gas. Proposed §§192.605(b)(12) and 195.402(b)(14) are adopted as final §§192.605(b)(9) and 195.402(c)(14), respectively.

With regard to the potential overlap with OSHA rules, Section 4(b)(1) of the OSHA Act prohibits OSHA from exercising authority over working conditions when another agency exercises authority

through regulation.

Comments on Testing of Pipe-Type and Bottle-Type Holders (Proposed §192.605(b)(13)(i), (ii), and (iii)): There were no substantive comments concerning proposed §§192.605(b)(13)(i), (ii), or (iii) and these standards are adopted as §§192.605(b)(10)(i), (ii), and (iii), respectively.

Comments on Abnormal Operation (Proposed §192.605(c)): Two industry associations and 18 companies commented on proposed §192.605(c) which sets forth items to be included in procedures for handling abnormal operations on gas transmission lines. All those commenting recommended that RSPA withdraw or revise the proposed rule. The most common reason given for changing the rule is that the proposed requirements duplicate existing §192.615, Emergency Plans. The commenters said they interpret any abnormal condition as an emergency until the condition is resolved or eliminated. One state, Massachusetts, said that §§192.605(a) and 192.605(c) should not be restricted to transmission lines but should apply to distribution lines as well.

Four of the commenters objected to usage of "operating design limits" when the term has not been defined. They questioned if "operating design limits" is the same as or different from MAOP, which is defined in the regulations and understood in the gas pipeline industry.

Response: The proposed rule does not duplicate §192.615. Abnormal conditions and emergency conditions are not equivalent. Abnormal conditions occur when operating design limits have been exceeded due to a pressure, flow rate, or temperature change outside the limits of normal conditions. As an example, for pressure surges, an abnormal condition would exist in a pipeline when pressure exceeds the MAOP but is within the differential allowed to activate pressure relieving and limiting equipment (see §192.201). Abnormal conditions are less severe, but could escalate to emergency conditions if not promptly corrected. Abnormal conditions do not pose as immediate a threat to life or property as do emergency conditions. Any transmission line operator that chooses to treat abnormal conditions as emergency conditions still must comply with §192.605(c).

Distribution system operators are not required to prepare a manual for abnormal conditions because they normally operate distribution pipelines at lower pressures than transmission pipelines. Also, due to the dangers involved in operating in populated areas, most unusual operating conditions would be considered by the distribution system operator to be an emergency until the condition is resolved or corrected.

Threatening events such as the presence of gas in a building, a fire near a pipeline, or an explosion near a pipeline constitute emergency conditions. Sections 192.605(c)(1)(i) through (v) are adopted as proposed.

Comments on Checking Variations from Normal Operation after Abnormal Operation has ended (Proposed §192.605(c)(2)): There were no substantive comments regarding proposed §192.605(c)(2) and this section is adopted as proposed.

Comments on Responsible Operator Personnel (Proposed §192.605(c)(3)): Two operators stated that the meaning of "responsible operator personnel" in proposed §192.605(c)(3) is unclear and should be clarified or changed.

Response: When considering "responsible operator personnel," responsible means a person the company expects to be answerable or accountable for O&M of the pipeline. Responsible and accountable are synonymous for purposes of this rule. Because RSPA has had the opportunity to clarify our intent in the preamble to this final rule, proposed §192.605(c)(3) is adopted as proposed.

Comments on Periodic Review of Personnel Response to Abnormal Operations (Proposed

§192.605(c)(4): Five operators opposed or recommended revision of proposed §192.605(c)(4), which proposed periodic review of responses by personnel to abnormal operations in order to determine the effectiveness of procedures for handling abnormal operations. In lieu of the proposed periodic review, the commenters instead recommended review of each abnormal operation and taking appropriate action when deficiencies are found.

Response: RSPA encourages operators to correct deficiencies in procedures when recognized. The company should not wait for a periodic review to correct such deficiencies. However, RSPA did not propose to require operators to review each response to an abnormal operation. This would be unnecessarily more stringent than the proposed rule. For this reason, the final rule retains the term periodic. Final §192.605(c)(4) is adopted as proposed.

Comments on Safety-Related Condition Reports (Proposed

§192.605(d): RSPA received no substantive comments regarding proposed §192.605(d) and this section is retained as proposed.

Comments on Surveillance, Emergency Response, and Accident Investigation (Proposed §192.605(e):

Six of the seven operators commenting opposed proposed §192.605(e) which would require procedures required by other sections in Part 192 concerning surveillance, emergency response, and accident investigation to be included in the O&M manual. They argued that the emergency plan should be separate from the O&M manual since emergency procedures differ from normal operations. One company stated that its emergency plan is "kept in a separate, readily identifiable binder and all appropriate foremen, supervisors and managers who would respond to an emergency have personal copies which are kept in their offices, homes and company vehicles. O&M manuals are normally available only at work locations where employees are present 40 hours a week."

Response: RSPA believes that the procedures discussing surveillance, emergency response and accident investigation should be part of an O&M manual. When Part 192 requires procedures for these subjects, it is easier to find and review them when they are located together at one place. The cross-referencing described previously would allow an operator to distribute separate volumes describing emergency procedures as needed. Nevertheless, the emergency procedures also must be included in the O&M manual. The final rule is adopted as proposed.

Comments on Redesignation, Amendment, Leakage Surveys, Abandonment or Deactivation of Facilities, and Removals: (Proposed changes to §§192.615, 192.706, 192.723, 192.727, 192.729,

192.733 and 192.737): There were no substantive comments concerning proposed changes to §§192.615, 192.706, 192.723, 192.727, 192.729, 192.733 and 192.737 and these changes are adopted as proposed.

RSPA Comment on Effective Date: RSPA believes that most operators will be able to assemble the cross-referenced manual promptly. However, others may require additional time to assemble the information and procedures required in this rulemaking. RSPA, therefore, is allowing a one-year period

to complete the manual. However, §§192.605(b)(9) and 195.402(c)(14) become effective 30 days after publication in the Federal Register since most operators already have the procedures and equipment necessary to comply with the rule.

Advisory Committee Reviews

Section 4(b) of the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1673(b)), and Section 204(b) of the Hazardous Liquid Pipeline Safety Act of 1979, as amended (PL 97-468, January 14, 1983), each contain similar requirements that proposed amendments to a safety standard established under the statute be submitted to a 15-member advisory committee for consideration.

The Technical Pipeline Safety Standards Committee, comprised of members knowledgeable about transportation of gas by pipeline, discussed and approved the gas rule changes by an 8 to 3 margin at a meeting held September 13, 1988. In like manner, the Technical Hazardous Liquid Pipeline Safety Standards Committee, on September 14, 1989, approved the hazardous liquid rule change, 8 to 2. No changes were recommended by either committee.

Rulemaking Analyses

E.O. 12866 and DOT Regulatory Policies and Procedures: This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was subject to review by the Office of Management and Budget. The rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034) because of the significant public and congressional interest following four pipeline failures in a two year period which caused 10 deaths, 26 injuries and significant property damage.

Regulatory Flexibility Act: Based on the comments received, I certify under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605; September 19, 1980) that this rule will not have a significant economic impact on a substantial number of small entities.

E.O. 12612: We have analyzed this final rule under the criteria of Executive Order 12612 (52 FR 41685; October 30, 1987). Four states, Connecticut, Massachusetts, Missouri and Nevada responded to the NPRM. All supported the rulemaking. However, Connecticut expressed concern that the rulemaking intended to limit the authority of the state agency to require an operator to amend its plans and procedures as necessary to provide a reasonable level of safety. RSPA had no such intention. The authority of a state to require an operator to amend its safety plans and procedures is not diminished by this rulemaking. Accordingly, RSPA finds that this final rule does not warrant preparation of a Federalism Assessment.

Paperwork Reduction Act

The information and recordkeeping requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. Chapter 35 under OMB NOs: 2137-0047 and 2137-0049.

Administration: Research and Special Programs Administration; Title: Operation and Maintenance Procedures for Pipelines; Need for Information: Provides guidance for safety of personnel while operating and maintaining pipelines; Proposed Use of Information: Assists pipeline operator employees in the operation and maintenance of pipelines; Frequency: Requires operator to review and update procedures each calendar year; Burden estimate: 240,000 hours in first year, small requirement in

succeeding years dependent on need to update; Respondents: 54,300 operators including master meter operators; Forms: none; Average Burden Hours per Respondent: 4.4.

RSPA received several comments on paperwork. A few commenters asserted that it is unnecessary to promulgate parallel rules applicable to gas and liquid operations because the physical properties of the products differ. However, RSPA believes that the O&M similarities vastly outnumber the differences and that compliance is enhanced by making the two regulations reasonably similar while recognizing the technical distinctions between gas and liquid pipelines. Furthermore, other commenters said paperwork should be better managed. RSPA agrees and allows operators to keep O&M procedures in paper or electronic files depending on the needs of the operator. The ultimate need to keep the paperwork is to require companies to maintain a sufficient amount of reliable information to reduce the likelihood of failures and casualties.

List of Subjects

49 CFR Part 192

Emergency, Maintenance, Operations, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Emergency, Maintenance, Operations, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, Parts 192 and 195 are amended to read as follows:

PART 192-[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; and 49 CFR 1.53.

2. Section 192.453 is revised to read as follows:

§192.453 General.

The corrosion control procedures required by §192.605(b)(2), including those for the design, installation, operation, and maintenance of cathodic protection systems, must be carried out by, or under the direction of, a person qualified in pipeline corrosion control methods.

3. Section 192.603(b) is revised to read as follows:

§192.603 General provisions.

• • • • •

(b) Each operator shall keep records necessary to administer the procedures established under §192.605.

• • • • •

4. Section 192.605 is revised to read as follows:

§192.605 Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For

transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

(b) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and operations.

(1) Operating, maintaining, and repairing the pipeline in accordance with each of the requirements of this subpart and subpart M of this part.

(2) Controlling corrosion in accordance with the operations and maintenance requirements of subpart I of this part.

(3) Making construction records, maps, and operating history available to appropriate operating personnel.

(4) Gathering of data needed for reporting incidents under Part 191 of this chapter in a timely and effective manner.

(5) Starting up and shutting down any part of the pipeline in a manner designed to assure operation within the MAOP limits prescribed by this part, plus the build-up allowed for operation of pressure-limiting and control devices.

(6) Maintaining compressor stations, including provisions for isolating units or sections of pipe and for purging before returning to service.

(7) Starting, operating and shutting down gas compressor units.

(8) Periodically reviewing the work done by operator personnel to determine the effectiveness, and adequacy of the procedures used in normal operation and maintenance and modifying the procedures when deficiencies are found.

(9) Taking adequate precautions in excavated trenches to protect personnel from the hazards of unsafe accumulations of vapor or gas, and making available when needed at the excavation, emergency rescue equipment, including a breathing apparatus and, a rescue harness and line.

(10) Systematic and routine testing and inspection of pipe-type or bottle-type holders including-

(i) Provision for detecting external corrosion before the strength of the container has been impaired;

(ii) Periodic sampling and testing of gas in storage to determine the dew point of vapors contained in the stored gas which, if condensed, might cause internal corrosion or interfere with the safe operation of the storage plant; and

(iii) Periodic inspection and testing of pressure limiting equipment to determine that it is in safe operating condition and has adequate capacity.

(c) Abnormal operation. For transmission lines, the manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded:

(1) Responding to, investigating, and correcting the cause of:

(i) Unintended closure of valves or shutdowns;

(ii) Increase or decrease in pressure or flow rate outside normal operating limits;

(iii) Loss of communications;

(iv) Operation of any safety device; and

(v) Any other malfunction of a component, deviation from normal operation, or personnel error which may result in a hazard to persons or property.

(2) Checking variations from normal operation after abnormal operation has ended at sufficient critical locations in the system to determine continued integrity and safe operation.

(3) Notifying responsible operator personnel when notice of an abnormal operation is received.

(4) Periodically reviewing the response of operator personnel to determine the effectiveness of the

procedures controlling abnormal operation and taking corrective action where deficiencies are found.

(d) Safety-related condition reports. The manual required by paragraph (a) of this section must include instructions enabling personnel who perform operation and maintenance activities to recognize conditions that potentially may be safety-related conditions that are subject to the reporting requirements of §191.23 of this subchapter.

(e) Surveillance, emergency response, and accident investigation. The procedures required by §§192.613(a), 192.615, and 192.617 must be included in the manual required by paragraph (a) of this section.

§192.616 [Redesignated from §192.615(d)]

5. Section 192.615(d) is redesignated as §192.616 Public education and the paragraph designation is removed.

§192.706 [Amended]

6. In §192.706, paragraph (a) is removed, the introductory text of paragraph (b) is redesignated as the introductory text of the section, and paragraphs (b)(1) and (b)(2) are redesignated paragraphs (a) and (b), respectively.

7. In §192.723, the section heading and paragraph (a) are revised to read as follows:

§192.723 Distribution systems: Leakage surveys.

(a) Each operator of a distribution system shall conduct periodic leakage surveys in accordance with this section.

* * * * *

8. In §192.727, the section heading and paragraph (a) are revised to read as follows:

§192.727 Abandonment or deactivation of facilities.

(a) Each operator shall conduct abandonment or deactivation of pipelines in accordance with the requirements of this section.

* * * * *

§192.729 [Removed]

9. Section 192.729 is removed.

§192.733 [Removed]

10. Section 192.733 is removed.

§192.737 [Removed]

11. Section 192.737 is removed.

PART 195-[AMENDED]

The authority citation for Part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2002; 49 CFR 1.53.

12. In §195.402, a new paragraph (c)(14) is added to read as follows:

§195.402 Procedural manual for operations, maintenance, and emergencies.

• • • • •

(14) Taking adequate precautions in excavated trenches to protect personnel from the hazards of unsafe accumulations of vapor or gas, and making available when needed at the excavation, emergency rescue equipment, including a breathing apparatus and, a rescue harness and line.

• • • • •

Issued in Washington, DC on February 4, 1994

Rose A. McMurray
Acting Administrator
Research and Special Programs
Administration

Docket No. PS-113; Amdts. 192-71A, 195-49A

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Title 49 - Transportation

49 CFR Part 192

[Docket No. PS-113; Amendments 192-71A, 195-49A]

RIN 2137-AB44

OPERATION AND MAINTENANCE PROCEDURES FOR PIPELINES

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final Rule: Response to Petition for Reconsideration.

SUMMARY: On February 11, 1994, RSPA issued a final rule amending existing operation and maintenance (O&M) procedures for gas pipeline facilities. The American Gas Association (Petitioner or AGA) filed a Petition for Reconsideration (petition) concerning five provisions of the final rule. After careful consideration of the petition, RSPA concludes the petition should be denied in part, and granted in part. RSPA is granting those aspects of the petition that relate to: (1) procedures required to be included in an operators O&M manual, and (2) the extent of the requirement to address malfunctions and other deviations during abnormal operations.

EFFECTIVE DATE: This final rule takes effect April 17, 1995.

FOR FURTHER INFORMATION

CONTACT: Mike Israni, 202-366-4571, concerning the contents of this final rule, or the Dockets Unit, 202-366-4453, regarding copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

RSPA promulgated the final rule on Operations and Maintenance Procedures for Pipelines (59 FR 6579, February 11, 1994) pursuant to 49 U.S.C. 60101 et seq. The purpose of the rule is to ensure that gas pipeline operators maintain thorough gas pipeline operation and maintenance (O&M) procedures. Gas pipeline operators are now required to include detailed procedures on normal and abnormal operation, maintenance and emergency-response activities in their O&M manual. Gas pipeline operators are also responsible for annually reviewing and updating their O&M manual. Furthermore, both gas and hazardous liquid pipeline operators are required to prepare procedures to be followed to safeguard personnel from the hazards associated with the unsafe accumulation of vapor or gas in excavated

trenches. As RSPA explained in the final rule, these actions will reduce the likelihood of pipeline failures, and provide a better basis for personnel training.

Summary of Petition and Comments on Petition

In its petition, AGA raised five issues relating to various aspects of the final rule, and requested that RSPA modify or clarify the final rule accordingly. The following sections summarize the issues raised in the petition, and provide RSPAs response to each request.

I. Extent of a Gas Pipeline Operators Annual Review of its O&M Manual

Petitioner asserts that the requirement that an operator review its activities periodically to determine the effectiveness of its operation and maintenance procedures (49 CFR 192.605 (b) (8)) coupled with the limited amount of time estimated to be required to complete an annual update of an operators procedures supports a change in 49 CFR 192.605 (a) be limited to changes needed to address any new regulatory changes. Petitioner overstates the burden that an annual review would place on operators if the review is not limited to updates because of regulatory changes. Although the annual review is not limited to regulatory changes, § 192.605 (a) does not require an annual line-by-line review of every procedure contained in an operators manual. Neither does it require an annual comprehensive review of an operators activities to determine whether changes to the operation and maintenance manual are needed.

The annual review under § 192.605 (a) requires that an operator annually review its manual, and that deficiencies identified during periodic reviews of activities under § 192.605 (b) (8) are addressed. While serious deficiencies, possibly identified following an accident, may require immediate correction of operating procedures, other deficiencies may await an annual update. Updating of operation and maintenance procedures on a regular, established basis makes good business sense and enhances the safe operation of the pipeline. Retaining outdated procedures could confuse an operators personnel as to the appropriate course of action.

Petitioner stated that 4.4 hours is insufficient time for one of its member operators to complete this review. We agree. The 4.4 hours noted in the preamble was based on 54,300 operators. The majority (52,000) of these operators are the master meter operators, whose plans are expected to be very simple and will have a minimal effect. In the justification to support the Paperwork Reduction Act, RSPA calculated that the initial burden was 104.3 hours per operator (based on 2,300 operators), excluding master meter operators. This 104.3 hours includes 52.2 hours that were already required by earlier O&M regulations. The additional 52.1 burden hours represent a one-time effort to develop additional O&M procedures that will affect these 2,300 operators only in the first year following the publication of this regulation. After the first year, the burden hours of all O&M regulations will return to the annual 52.2 hours per year per operator. The paperwork justification is filed in the Docket.

Accordingly, Petitioners request to limit the annual review required by § 192.605 (a) is denied.

II. Procedures Required to Be Included in an Operators O&M Manual

In its petition, AGA asserts that § 192.605 (b) of the final rule should be clarified to reflect that an operator must only include procedures in its manual that are applicable to its particular pipeline system (49 CFR 192.605 (b)). Petitioner believes that as written, the regulation requires a gas pipeline operator to include O&M procedures responsive to all of the procedural requirements listed under §§ 192.605 (b) (1) - (10), regardless of whether particular regulations are applicable to an operators pipeline system.

In the final rule, § 192.605 (b) requires that the O&M manual required by § 192.605 (a) must include certain specific procedures to provide safety during maintenance and operations. §§ 192.605 (b) (1) - (10) lists ten specific procedural elements which are to be included in the operators manual. However, not all of these subsections are applicable to operations and maintenance activities at every gas pipeline facility. RSPA never intended that a gas pipeline operator have every procedure set forth in those subsections. In response to comments, RSPA stated in the preamble to the final rule (59 FR 6580) that:

RSPA requires operators to prepare O&M procedures only for those pipeline facilities within their system. For example, it would not be necessary to prepare compressor startup procedures if the company has no compressors. The procedures should be clear, straightforward and applicable to the company's system.

Petitioner suggests that the words if applicable be added after the word following to the text of § 192.605 (b) to clarify that procedures be prepared for operational situations only to the extent that an operator will face such a situation.

RSPA agrees that the regulation, as written, may seem to unnecessarily require an operator to produce procedures relating to the operation of a gas pipeline system that have no practical value to anyone. Therefore, RSPA is amending the final rule by adding the term if applicable in the text of § 192.605 (b) after the word following.

III. Procedures Regarding Protection of Personnel in Excavated Trenches From Unsafe Accumulations of Vapor or Gas

Petitioner also requested that the requirement that operators include procedures in their operations manuals relating to worker exposure to gas or hazardous vapors in excavated trenches (49 CFR 192.605 (b) (9) and 49 CFR 195.402 (c) (14)) be broadened to require operators to include procedures to address worker safety in general.

Sections 192.605 (b) (9) and 195.402 (c) (14) of the final rule require that gas and hazardous liquid operators include procedures in their respective O&M plans to address the following:

Taking adequate precautions in excavated trenches to protect personnel from the hazards of unsafe accumulations of vapor or gas, and making available when needed at the excavation, emergency rescue equipment, including a breathing apparatus and a rescue harness and line.

RSPA does not agree with Petitioners argument that a requirement specifically addressing worker safety in excavated trenches will give the impression that this is the only worker safety provision that need be addressed in a proper O&M plan. While it may be the only provision in this rulemaking directly addressing worker safety, many of RSPA's rules indirectly impact worker safety.

Petitioner also argues that RSPA has not demonstrated that current Office of Pipeline Safety (OPS) regulations do not adequately prevent worker exposure to hazardous vapors or gas. RSPA has broad rulemaking authority for pipeline safety. Under this authority, RSPA may issue regulations to address specific worker safety issues as they relate to the safe and environmentally sound transportation of gas by pipeline. It is not necessary that RSPA demonstrate that current regulations are inadequate before issuing specific safety regulations.

Petitioner urges RSPA to revise the worker safety provision, stating that worker safety issues should not be addressed specifically, but instead that the issue be addressed generically. This suggestion goes beyond the scope of the NPRM and is not adopted.

RSPA disagrees with Petitioners claim that compliance with this provision would entail enormous costs. RSPA prepared a Regulatory Evaluation which concluded that the final rule would have a positive cost/benefit ratio. Costs of complying with the final rule are small because most operators need only make emergency rescue equipment available when needed at the trench excavation. RSPA did not

receive any comments to the preliminary regulatory evaluation that accompanied the NPRM and AGA has not provided detailed information about increased costs. Furthermore, since most operators regularly train employees in industrial safety, and currently include operator safety as an integral part of their O&M plan, RSPA believes the costs of revising the O&M plan to include worker safety would not be increased significantly.

Accordingly, the Petitioners request to change §§ 192.605 (b) (9) and 195.402 (c) (14) is denied.

IV. Extent of Requirement to Address Malfunctions and Other Deviations During Abnormal Operations

In its petition, AGA also requested that RSPA should remove the requirement in 49 CFR 192.605 (c) (1) (v) requiring that an operator address abnormal operations in its O&M manual. The rule states as follows:

(c) Abnormal operation. For transmission lines, the manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded;

(1) Responding to, investigating, and correcting the cause of:

• • • • •

(v) Any other malfunction of a component, deviation from normal operation, or personnel error which may result in a hazard to persons or property.

Petitioner asserts that this language is confusing and could be interpreted to require operators to have written procedures in their O&M manual describing how to respond to unforeseeable malfunctions, deviations from normal operation, or personnel error. Petitioner requests that RSPA clarify the regulation to indicate that an operator need only include written procedures for foreseeable malfunctions when design limits have been exceeded.

The operator is required to prepare procedures when operating design limits have been exceeded, such as limits of pressure, flow, and temperature that indicate an abnormal condition which should be investigated and corrected to avoid approaching the strength limits of the system and the potential for failure. Pipeline systems vary, and an operator must be able to provide procedures to apply to the particular requirements of its system. The operator must plan for potential foreseeable causes of abnormal pipeline operations.

The identical rule for hazardous liquids, 49 CFR 195.402 (d) (1) (v) has been in effect since 1979 (44 FR 41197, July 16, 1979). Regulated hazardous liquid pipeline operators have not been confused by the regulation, apparently assuming correctly that the rule only applies to foreseeable events. However, to avoid confusion, RSPA is amending the final rule to add the word foreseeable in § 192.605 (c) (1) (v).

V. Extent of Requirement That Operators of Natural Gas Distribution Systems Prepare Procedures for Addressing Abnormal Operations

Petitioner asserts that the final rule should exempt natural gas distribution systems from the requirement to have procedures for addressing abnormal operations on its transmission lines as described in 49 CFR 192.605 (c) of the final rule. AGA contends that many small diameter and short distance pipelines have little similarity to interstate transmission systems, but are regulated as transmission lines only because they operate at above 20 percent of the pipes specified minimum yield strength (SMYS). Petitioner stated that compliance with the regulation would require separate abnormal operations plans for each separate section of pipe.

RSPA agrees with Petitioner that natural gas transmission lines operated by distribution operators in connection with their distribution systems should be exempt from the requirement to have procedures that address abnormal operations. This was the intent of the final rule. The preamble to the final rule stated that [d]istribution system operators are not required to prepare a manual for abnormal conditions because they normally operate distribution pipelines at lower pressures than transmission pipelines * * * due to the dangers involved in operating in populated areas, most unusual operating conditions would be considered by the distribution system operator to be an emergency until the condition is resolved or corrected. (59 FR 6582; February 11, 1994) Accordingly, RSPA is amending the final rule to clarify that an operator of a high-pressure or low-pressure distribution system, as defined in 49 CFR 192.3, is exempt from the requirement to prepare a manual for abnormal operations.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is not considered a significant regulatory action under section 3 (f) of the Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979) because it merely clarifies the content of a final rule and does not materially affect the substance of the final rule.

Federalism Assessment

This rule will not have substantial direct effects on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. This rule only makes minor editorial changes to a previously issued rule. Therefore, in accordance with Executive Order 12612 (52 FR 41085, October 30, 1987) RSPA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act

There are very few small entities that operate pipelines affected by this rulemaking. To the extent that any small entity is affected, the effect is minimal because it does not impose additional requirements. Based on this fact, I certify under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605; September 19, 1980) that this rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, Part 192 is amended to read as follows:

PART 192 [AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60118; 49 CFR 1.53.

2. In § 192.605, the introductory text of paragraph (b) is revised to read as follows:

§ 192.605 Procedural manual for operations, maintenance, and emergencies.

• • • • •

(b) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations.

• • • • •

3. In § 192.605, paragraph (c) (1) (v) is revised, and a new paragraph (c) (5) is added to read as follows:

§ 192.605 Procedural manual for operations, maintenance and emergencies.

• • • • •

(c) • • •

(1) • • •

(v) Any other foreseeable malfunction of a component, deviation from normal operation, or personnel error, which may result in a hazard to persons or property

• • • • •

(5) The requirements of this paragraph (c) do not apply to natural gas distribution operators that are operating transmission lines in connection with their distribution system.

D. K. Sharma,

Administrator, Research and Special Programs Administration.

[FR Doc. 95-6363 Filed 3-16-95; 8:45 am]

Docket No. PS-126; Amdts. 190-5, 192-72, 193-9, 195-50

[RIN 2137-AB71]

Passage of Instrumented Internal Inspection Devices

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final Rule

SUMMARY: This final rule amends the gas, hazardous liquid and carbon dioxide pipeline safety regulations to require that certain new and replacement pipelines be designed and constructed to accommodate the passage of instrumented internal inspection devices (smart pigs). This action was taken in response to a mandate in the Pipeline Safety Reauthorization Act of 1988. The intended effect of these amended regulations is to improve the safety of gas, hazardous liquid and carbon dioxide pipelines by permitting their inspection by "smart pigs" using the latest technology for detecting and recording abnormalities in the pipe wall.

EFFECTIVE DATE: The effective date of this final rule is May 12, 1994.

FOR FURTHER INFORMATION CONTACT: Albert C. Garnett, (202) 366-2036 regarding the subject matter of this amendment or the Docket Unit, (202) 366-5046 regarding copies of this amendment or other material in the docket.

SUPPLEMENTARY INFORMATION

Notice of Proposed Rulemaking

RSPA published a Notice of Proposed Rulemaking (NPRM) on November 20, 1992 (57 FR 54745) proposing that new and replacement gas transmission lines and new and replacement hazardous liquid pipelines and carbon dioxide pipelines be designed and constructed to accommodate the passage of instrumented internal inspection devices. However, the rules would not apply to specific installations for which such design and construction would be impracticable. In addition, the NPRM proposed a procedure for operators seeking an administrative ruling on any rule in parts 192, 193 and 195 in which the administrator is authorized to make a finding or approval.

The NPRM was issued in response to Congressional mandates in sections 108(b) and 207(b) of the Pipeline Safety Reauthorization Act of 1988 (hereinafter "Reauthorization Act") (Pub. L. 100-561; Oct. 31, 1988). Section 108(b) of the Reauthorization Act amended section 3 of the Natural Gas Pipeline Safety Act of 1968 (NGPSA) by adding subsection (g), "Instrumented Internal Inspection Devices" (49 App. U.S.C. 1672). This new subsection requires the Secretary of Transportation to establish regulations requiring that:

- (1) the design and construction of new [gas] transmission facilities, and
- (2) when replacement of existing transmission facilities or equipment is required, the replacement of such existing facilities, be carried out, to the extent practicable, in a manner so as to accommodate the passage through such transmission facilities of instrumented internal inspection devices (commonly referred to as "smart pigs").

Section 207(b) of the Reauthorization Act amended section 203 of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPISA) (49 App. U.S.C. 2002) to require that DOT establish similar regulations with respect to pipeline facilities subject to the HLPISA.

Future Rulemaking Involving Smart Pigs The Pipeline Safety Act of 1992 (hereinafter "PLSA of 1992") (Pub. L. 102-508; Oct. 24, 1992) in sections 103 and 203 amended the NGPSA and the HLPISA, respectively, by requiring the Secretary of Transportation to issue regulations that require the periodic inspection of gas transmission facilities and hazardous liquid pipelines in high-density population areas, and hazardous liquid pipelines in environmentally sensitive areas or crossing navigable waterways. In response to these mandates, RSPA will issue an NPRM proposing to prescribe the circumstances, if any, under which such inspections would be conducted with smart pigs. In those circumstances under which an inspection by a smart pig would not be required, RSPA is mandated to require the use of an inspection method that is at least as effective as the use of smart pigs in providing for the safety of the pipeline.

Regulations

In the NPRM, RSPA proposed to require all future new and replacement gas transmission lines subject to 49 CFR Part 192 and hazardous liquid and carbon dioxide pipelines subject to 49 CFR Part 195 to be designed and constructed to accommodate the passage of smart pigs, except where impracticable. For the purposes of this rulemaking, RSPA proposed that it would be impracticable to require the accommodation of smart pigs under the following categories of piping: manifolds, station piping (such as compressor stations, pump stations, metering stations or regulator stations), cross-overs, and fittings providing branch line junctures (such as tees and other lateral connections). Additionally, the NPRM proposed to allow pipeline operators to petition (minimum 90 days in advance) the Administrator, in a particular case, for a finding that design or construction to accommodate a smart pig would be impracticable.

Advisory Committees

The Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) have been established by statute to evaluate pipeline safety regulations. The TPSSC and the THLPSSC met in joint session in Washington, D.C. on August 3, 1993, and considered the NPRM. Both committees accepted the NPRM as feasible, reasonable, and practicable with the incorporation of several changes. RSPA's disposition of the advisory committees' recommendations are discussed below.

Discussion of Comments

RSPA received public comments on the proposed rule change from 48 pipeline operators, seven pipeline-related associations, three state/Federal agencies, and one consulting engineer. The following discussion explains how RSPA considered the advisory committees' positions and the public comments on the proposed regulations in developing the final rule.

Low stress pipelines

Twenty-three commenters indicated that the rule should except pipelines in which the internal operating pressure results in low stress in the pipe wall. Many commenters argued that since gas transmission lines are not subject to certain pipeline safety regulations (§§ 192.609, 192.711 & 192.713) if they operate at or below 40 percent of the specified minimum yield strength (SMYS), that this rule should similarly not apply to these same transmission lines. The TPSSC also recommended that piping operating at a stress level of 40 percent of SMYS or less be excepted.

While RSPA understands this position, it does not agree that it justifies exception of gas transmission lines based solely on their low hoop stress at maximum operating pressure. Pipelines operating at lower stress levels are as susceptible to corrosion and other types of damage, identifiable by smart pigs, as pipelines operating at higher stress. In addition, the Reauthorization Act mandate to require certain new and replacement pipelines to be designed and constructed to accommodate the passage of smart pigs limits RSPA's discretion only to situations that make such design and construction impracticable. RSPA finds that an exception from the requirements adopted in this rule for pipelines operating at or below 40% SMYS is not appropriate, because the pipe wall stress does not, within the terms of the Reauthorization Act, affect the practicability of designing and constructing a line to accommodate passage of smart pigs.

Short lengths

Eighteen commenters recommended that the rule except new or replacement pipelines based on their short lengths. Some commenters recommended excepting replacement pipelines depending on whether the adjoining portions of the pipeline are piggable. One of these commenters reasoned that unless the adjoining portion of pipeline can accommodate the passage of instrumented internal inspection devices, there can be no added benefit from making a replacement section piggable because the pipeline overall will still contain restrictions prohibiting inspection by smart pigs.

Nine commenters recommended exception of minimum lengths that ranged from 2000 feet to 5 miles. A gas transmission line operator recommended that the minimum excepted length should be the distance between compressor stations (40 to 60 miles), to exclude the necessity to replace non-full opening valves on short replacement sections. Four commenters suggested that the minimum excepted length should be determined by RSPA.

The disparity of the commenters' recommendations illustrates that there is no generally accepted rationale for determining the minimum length, if any, of pipe that should be excepted. Moreover, RSPA does not agree that the rule should except replacement pipelines based on either the length of the replaced section of pipeline or on whether the adjoining portion of pipeline can accommodate passage of instrumented internal inspection devices.

The plain objective of the statutory mandate is to make both short and long pipelines that are not now piggable from end to end, piggable in time through replacements. Therefore, the final rule does not include these exceptions. However, operators wishing to except short length pipelines may want to petition the Administrator under the procedures set out in the new §190.9.

Non-steel pipelines

Five commenters recommended that the rule apply only to steel pipelines. One commenter argued that current internal inspection devices cannot monitor non-ferrous pipelines for stress corrosion. The commenter contends that no benefit derives from the running of smart pigs on these lines, and therefore it would be unreasonable to require operators to make them piggable.

Another commenter contended that, although some polyethylene gas pipelines are by DOT definition transmission lines, there are no smart pigs (except camera pigs) that are designed for use in plastic pipe.

RSPA does not agree that the rule should except non-steel pipelines. It is true that smart pigs cannot presently monitor non-steel pipelines for as many defects or anomalies as are detectable in steel pipelines. However, smart pigs can currently detect some physical defects in non-steel pipelines; i.e.

dents, change in internal diameter, ovality, misalignment of joints, and change in position of the pipe. Moreover, by making new and replacement plastic pipelines piggable, they will be able to accommodate new smart pig technology as it is developed. Nonetheless, all the exceptions in this rule applicable to steel pipelines are also applicable to non-steel pipelines.

Small diameter pipelines

Twenty-four commenters recommended that the rule except the smaller diameter pipelines. Some reasoned that commercially available smart pig technology is limited to the larger pipe sizes. Consequently, for those sizes of pipe for which there are no commercially available smart pigs, designing and constructing pipelines to pass smart pigs would be impracticable.

RSPA does not agree that the rule should include a blanket exception for all small diameter pipelines. In recent years we have seen the increasing miniaturization of electro-mechanical components in equipment used in smart pigs and we expect the trend to continue.

RSPA understands that where no commercially available technology exists to inspect a particular pipe size by smart pigs, the pipeline operator would lack sufficient technical information to establish the design and construction criteria, e.g. minimum internal pipe diameter and minimum pipe bend radius, essential for passage of smart pigs. Therefore, the final rule has been written to apply only to pipeline diameters for which there is a commercially available smart pig at the time the new or replacement pipeline is designed. At the time of preparation of this document, RSPA finds that 4 inches is the minimum nominal pipe size for which smart pigs are commercially available.

Gas transmission lines operated in conjunction with distribution systems

Twelve commenters recommended that the rule except lines classified as transmission lines because their hoop stress is 20 percent or more of SMYS, that operate in conjunction with gas distribution systems. They reasoned that, typically, these lines have components and configurations that impede passage of instrumented internal inspection devices.

Some commenters reasoned that many of these transmission lines are the sole gas supply to large gas distribution systems. So, inspection of these lines by instrumented internal inspection devices could, if problems develop while running the inspection device, disrupt customer service.

RSPA does not agree that the rule should provide an exception for gas transmission lines that are operated in conjunction with distribution systems (except as discussed under the heading "Gas transmission lines in crowded underground locations"). First, although such lines may have configurations or components that impede inspection by smart pigs, the commenters did not provide information to substantiate the contention that these conditions are impracticable to avoid on new or replacement lines. RSPA believes it is practicable to design and construct new and replacement transmission lines operated in conjunction with distribution systems to accommodate passage of smart pigs. Second, potential service disruption (from stuck smart pigs) on single feed transmission lines will not be a factor on lines that are properly designed, constructed and maintained to accommodate smart pigs. Also, to further reduce the possibility of the smart pig becoming stuck, prior runs can be scheduled, with cleaning and caliper pigs, during periods of minimal load requirements. Third, the use of smart pigs to monitor the integrity of single feed transmission lines can detect problems before they can affect the reliability of the gas supply to the customers.

Gas transmission lines in crowded underground locations

Twelve commenters recommended that RSPA except gas transmission lines located in certain urban areas. Most of them pointed out that utility locations underneath city streets in downtown urban areas are typically overcrowded. Physical constraints from other utilities and the structural boundary of available space make the design and construction of replacement pipelines to accommodate smart pigs impracticable. For example, many underground utility locations lack sufficient clearance between existing utilities to allow the replacement of existing short radius elbows with longer radius elbows (which consume more space) to permit passage of smart pigs. Nonetheless, a commenter from a state with few large cities suggested that internal inspection devices should only be required for pipelines located in Class 3 or 4 locations and in environmentally sensitive areas.

While gas transmission lines operated in conjunction with distribution systems are generally covered under this rule, RSPA agrees that the rule should provide an exception whenever gas transmission lines operated in conjunction with distribution systems are located in certain congested urban areas. RSPA believes it is impracticable to design and construct these particular transmission lines, considering the arguments presented above, to accommodate passage of smart pigs when there exist physical constraints, not associated with the pipe itself, which are beyond an operator's control. Furthermore, RSPA understands that underground utility areas in Class 4 locations are typically overcrowded and unable to accommodate the pipeline configurations needed for the accommodation of smart pigs. So, in the final rule, §192.150(b)(6) excepts gas transmission lines that are: operated in conjunction with a gas distribution system and installed in Class 4 locations. However, gas transmission lines, not operated in conjunction with a gas distribution system are not excepted because these lines generally pose greater risks, typically transporting gas at higher pressures.

Gas, oil and carbon dioxide storage facilities

Twelve commenters recommended that the rule except gas transmission lines which are part of injection/withdrawal systems at gas storage facilities. Commenters said these gas storage facilities have small diameter piping configured in a grid-like pattern that would not permit the passage of smart pigs. The TPSSC likewise recommended that storage facilities be excepted. Similarly, one commenter urged an exception of delivery/withdrawal piping associated with hazardous liquid storage in breakout tanks, due to the short lengths, short radius bends and other tank farm piping configurations which are unable to accommodate the passage of smart pigs. The THLPSSC also recommended that tank farm piping be excepted from compliance with this rule.

RSPA agrees that because of piping configuration constraints associated with the storage facilities for gas, hazardous liquids and carbon dioxide it is generally impracticable for design and construction to accommodate passage of smart pigs. Therefore, §192.150(b)(3) of the rule excepts piping associated with gas storage facilities, other than a continuous run of transmission line between a compression station and storage facilities, and §195.120(b)(2) excepts piping associated with liquid storage facilities. Nonetheless, RSPA will be studying underground storage issues and, based on that work, may initiate rulemaking to address new safety measures that may be necessary.

Emergencies and unforeseen construction problems

The NPRM proposed to exclude from the rule piping that the Administrator finds, upon petition by an operator, to be impracticable to design and construct to accommodate the passage of a smart pig. Eighteen commenters stated that many construction situations are under tight contractual or other time constraints that do not allow sufficient time to obtain a finding by the Administrator. For example, an operator may have to make immediate adjustments in the field because of the discovery of obstructions or other unforeseen problems. Thus, some commenters reasoned that while the Administrator would have at least 90 days to decide whether to grant a petition, most pipeline construction projects would not

allow delays of a few days. A few commenters suggested that the operators should be permitted to accept the "burden of proof" when encountering an impracticability during construction and so inform RSPA.

Similarly, the TPSSC recommended that the test for impracticability be left up to the operator instead of petitioning the Administrator for a finding. The Committee suggested the wording "and any other piping that the operator determines and documents would be impracticable to design and construct to accommodate the passage of an instrumented internal inspection device" be substituted for "the Administrator finds" in the exception of §192.150(b) from the NPRM. Also, the TPSSC recommended that "emergency repairs" be added to the list of exceptions contained in §192.150(b).

RSPA acknowledges that emergencies, construction time constraints, and unforeseen pipeline construction problems would not allow operators the time to petition for a finding of impracticability and wait for RSPA's response. Therefore, RSPA has added §§192.150(c) and 195.120(c) which permit an operator discovering an emergency, construction time constraint or other unforeseeable construction problem to make a provisional determination of impracticability. In such instances the operator must document the circumstances resulting in its impracticability determination. Within 30 days after discovering an emergency or a construction problem, the operator must petition under the new §190.9, "Petitions for finding or approval" for a finding by the Administrator that design and construction to accommodate passage of internal inspection devices would be impracticable. If the petition is denied, the operator must modify the line section to allow passage of instrumented internal inspection devices, within 1 year after the date of the notice of denial.

Petitions for finding or approval The NPRM proposed that §190.9, "Petitions for finding or approval" be added to part 190 of this Chapter. Except as discussed above, commenters did not oppose the establishment of a procedure to allow an operator to petition the Administrator for an administrative ruling on any rule under parts 192, 193, and 195 in which the Administrator is authorized to make a finding or approval. Heretofore, a similar procedure in part 193 (§193.2015) applied only to petitions relating to LNG facilities.

In this rule, the §190.9 has been revised to require operators of intrastate pipelines located in states participating under section 5 of the NGPSA or section 205 of the HLPsA to direct their petitions to the state pipeline safety agency. The participating state agency will then make a recommendation to the Administrator as to the disposition of the petition.

Restraining elements

Nine commenters objected to the proposed requirement to add restraining devices to all fittings providing branch line connections. Restraining elements are added when the outlet to the branch line could impede the passage of the smart pig. Many commenters argued that the addition of restraining elements to these fittings may inhibit cleaning of the branch lines by spheres or cleaning pigs. Other commenters pointed out that the use of restraining elements in the main line is unnecessary whenever the branch line has a significantly smaller diameter than the main line.

RSPA agrees that the rule should not require restraining elements where they are unnecessary or make impracticable other functions that are an essential and routine part of pipeline operations and maintenance. So, the rule does not include a requirement for installing restraining elements, but leaves their installation to the discretion of the operator.

Offshore pipelines

Eleven commenters recommended that the rule except offshore pipelines. Several commenters based their recommendations on the fact that offshore pipeline networks are tied-in by "hot-tapped" or tee connections and these tie-ins are without restraining elements. This type of construction permits cleaning pigs or spheres, required for removal of materials (such as liquids from gas lines and wax from oil lines) that impede normal flow, to pass into laterals of ever increasing diameters. The system design is contingent on the passage of these cleaning devices through the various laterals for final tie-in to the liquid trunk (main) lines and to the gas transmission lines. Then, these larger diameter lines transport the cleaning pigs to onshore facilities, for eventual retrieval.

An operator of offshore gas systems said that because of the many subsea tie-ins to pipelines of larger diameter, smart pigs will require some type of elaborate receiving device or physically disconnecting/lifting the pipeline, either of which would be very expensive. Other commenters advised that smart pigs cannot be launched or received subsea. An offshore operator said that new offshore platforms typically connect new platforms to an existing subsea network. Connections to an existing subsea pipeline are "hot-tapped" or are extensions to existing laterals. This operator summed up his recommendations by saying that it is impractical to design for the passage of smart pigs through these connections and it is certainly impractical to install subsea traps.

Commenters also stated that because of space limitations on the offshore platforms, the pipelines (risers) which have been routed up onto the platforms have been designed and constructed with short radius bends and other fittings that are only adequate for the launching of cleaning pigs or spheres. These commenters argue that the construction of the risers with long-sweeping bends on the sea floor and on the platform, and the installation of the longer launchers and receivers required to accommodate smart pigs, would be impracticable. For many of the same reasons, both the TPSSC and the THLPSSC recommended that offshore pipelines be excepted from the rule.

RSPA acknowledges that many subsea pipelines have been designed and constructed without restraining bars on branch line connections, because they would prohibit the passage of cleaning pigs and spheres. This design allows cleaning pigs and spheres to pass through the network of subsea laterals and ultimately into larger transmission or trunk (main) lines that transport gas or liquids to shore facilities.

It is also apparent to RSPA, that designers of offshore platforms seldom anticipated the space required to accommodate facilities necessary for the operation of smart pigs. Moreover, RSPA accepts that smart pigs cannot be launched or received subsea. However, RSPA does not agree with the commenters or the two advisory committees that all gas and liquid offshore pipelines should be fully excepted from this rule.

For pipelines subject to part 195, the current §195.120 requires that each component of a main line system, other than manifolds, that change direction within the pipeline system must have a radius of turn that readily allows the passage of pipeline scrapers, spheres, and internal inspection equipment. This requirement for main line components to readily allow the passage of smart pigs through changes of direction has been in effect since 1970, when offshore liquid lines became subject to part 195.

Part 192 has applied to offshore gas lines since 1971. In accordance with the requirements of section 108(b) of the Reauthorization Act, RSPA sees the need for certain new and replacement offshore gas transmission lines and risers from these lines to be designed and constructed to allow passage of smart pigs.

Accordingly, in §§192.150(b)(7) and 195.120(b)(6), while the rule has not excepted all offshore lines and related facilities, it has excepted offshore lines which are not gas transmission lines or liquid main lines 10 inches or greater in nominal diameter that transport these commodities to onshore facilities. RSPA limited the accommodation of smart pigs to these larger gas transmission and liquid main lines because we find, for the reasons expressed by the commenters, that the unique design and construction of the excepted offshore pipeline systems makes them generally impracticable for the passage of smart pigs.

When the rulemaking mandated by the PLSA of 1992 discussed under the heading - Future Rulemaking Involving Smart Pigs - is issued, RSPA may prescribe the circumstances for inspection with smart pigs. Such circumstances, if included in any final rule, may require the need for offshore platforms that contain risers, to also accommodate launchers and (where appropriate) receivers for the passage of smart pigs.

Above ground pipelines

Three commenters recommended that RSPA except above ground pipelines because operators can inspect these pipelines visually.

RSPA finds that regardless of whether an operator can visually inspect a line above ground is irrelevant to the practicability of design and construction of pipelines to accommodate passage of smart pigs. Furthermore, smart pigs are capable of detecting internal defects that cannot be discovered by a visual inspection of the outside surface of a pipeline. Moreover, above ground pipelines are required to be externally coated and coating materials usually preclude visual inspection of the outside surface. So, this recommendation was not adopted.

Clarification of the term "replacement"

Thirteen commenters recommended that the terms "replacement transmission line" and "replacement pipeline" be clarified to indicate the portion of an existing line that must be modified to accommodate smart pigs when replacements are made for other reasons.

A gas pipeline operator recommended that the meaning of the term "replacement transmission line" be limited to the pipe and components such as valves, bends, and fittings which are added to or replaced in an existing transmission line. Another gas pipeline operator expressed support for regulations stating that replacement pipeline facilities could not be constructed which would further restrict the passage of a smart pig. RSPA cannot accept the first commenter's recommendations because if "replacement" is limited to a replaced valve, a joint of pipe, or other component, then pipelines with restrictive components, such as elbows and tight radius field bends, (which when properly maintained never need replacement) would never be piggable. Also RSPA cannot accept the second commenter's position because it appears to mean that the operator need only to make the replacement no more restrictive than it was prior to it being replaced. The clear intent of the congressional mandate is to improve an existing pipeline's piggability.

A pipeline operator and a pipeline related association, recommended that the word "pipeline" be replaced with "line section" defined in §195.2. A gas pipeline association urged that "replacement transmission line" be changed to "replacement transmission section" to clearly indicate that only the portion of line replaced must accommodate the passage of smart pigs. Another pipeline related association interpreted "replacement" to mean either: (1) replacement of the entire line, or (2)

replacement of the line segment between two logical points (e.g. compressor stations). A gas pipeline operator also believed the term "segment" is appropriate because it is frequently used in part 192 and it recognizes that pipelines are segmented for different regulatory purposes. A gas transmission operator felt that the definition of "replacement line" should exempt the replacement of partial segments of existing gas pipelines within a valve section that are replaced because of class change or regular maintenance work because of construction restraints. A gas distribution operator stated that if the proposal was intended to apply to the replaced or relocated section only, then that limitation should be in the final rule.

The Congressional mandate requires the gradual elimination of restrictions in existing gas transmission lines and existing hazardous liquid and carbon dioxide lines in a manner that will eventually make the lines piggable. Operators are only required to remove the restrictions when replacements are made on the pipeline. On those occasions, the economic burden of the upgrading is reduced because crews and equipment will be on the site and that portion of the pipeline will need to be out of service. Six of the commenters appear to have considered the favorable economics when they recommended that the upgrading for piggability cover the "line segment" or "line section". While "line segment" is frequently used in the gas regulations it is not defined, although it's used similarly to "line section" (one commenter suggested it was the distance between two logical points e.g. compressor stations).

Therefore, in consideration of the comments "line section" is used in place of the term "replacement transmission line" in part 192, and "line section" is used in place of the term "replacement pipeline" in part 195, as those terms are used in the NPRM. "Line section," as added to part 192 is similar to "line section" as it is defined in §195.2. In part 195, "line section" is currently defined in §195.2 to mean a continuous run of pipe between adjacent pressure pump stations, between a pressure pump station and terminal or breakout tanks, between a pressure pump station and a block valve, or between adjacent block valves. Now, in part 192 "line section" is defined in §192.3 to mean a continuous run of transmission line between adjacent compressor stations, between a compressor station and storage facilities, between a compressor station and a block valve, or between adjacent block valves.

Accordingly, §§192.150(a) and 195.120(a) have been revised to clarify that when a replacement is made of line pipe, line valve, line fitting, or other line component in an existing pipeline, covered by this rule, the complete line section must be made to accommodate smart pigs.

Also, RSPA has modified the final rule in response to the comment from the gas transmission operator that felt replacements of certain partial segments within an existing valve section that are replaced because of MAOP class change or regular maintenance work requirements, should be excepted because of construction constraints. Although, the construction restraints were not specified, RSPA has addressed construction type problems with the procedure set out in §§192.150(c) and 195.120(c).

Launchers and receivers

Several commenters agreed with statements in the NPRM that installation of pig traps should not be required by this rulemaking, but should be left to the discretion of pipeline operators. Also, a commenter agreed with the statement in the NPRM that operators should determine where pig traps are to be permanently located based on individual operating circumstances. A gas pipeline operator said that in a practical sense, it would be more cost effective to add launchers and receivers at the time of construction rather than after the transmission line is in service (which could again require the line to be taken out of service). The National Transportation Safety Board urged RSPA to revise its proposal so that facilities for entering and removing smart pigs are required on all pipelines capable of being traversed by such equipment. However, RSPA believes that revising the NPRM for this purpose would

delay the regulatory effect of this rulemaking and the requirement may be included in a future rulemaking.

In the final rule, as in the NPRM, RSPA has not included requirements for launchers or receivers. However, when the rulemaking mandated by the PLSA of 1992 is issued, RSPA may prescribe the circumstances for inspection with smart pigs. Such circumstances, if included in any final rule, may require facilities for launching or receiving smart pigs. In the meantime, RSPA urges pipeline operators to consider the economic advantages of voluntarily installing facilities, at the time of construction or replacement of pipelines, for launching and receiving smart pigs.

Exemption of gathering lines

Several commenters urged clarification of the exception for gas gathering lines in the proposed §192.9.

In light of the comments, RSPA agrees that clarification is needed. Therefore, the exception, of the new §192.150, has been retained and the current exception, as provided in §192.1, has been referenced in the revised §192.9.

Moreover, in §§192.150(b)(7) and 195.120(b)(6), RSPA has excepted offshore pipelines other than gas transmission or liquid main lines, 10 inches or larger, that transport gas or liquids to onshore facilities. Liquid gathering lines, which are defined in §195.2, are included in this exception.

Economic Impact Nineteen commenters discussed the economic impact and the majority found fault with RSPA's assessment that the rule would add minimally to the average expense of pipeline design and construction.

As a result of information presented by the commenters, RSPA has excepted various categories of pipelines from the final rule. These exceptions are: piping associated with storage facilities, other than gas transmission lines; piping sizes for which a smart pig is not commercially available; gas transmission lines, operated in conjunction with a distribution system, which are installed in Class 4 locations; and offshore pipelines other than certain gas transmission and liquid main lines. Additionally, operators are permitted to make a provisional determination of impracticability in instances of emergencies, construction time constraints or other unforeseeable construction problems that require immediate action. Other less urgent problems can be handled through the newly established procedure in §190.9, "Petitions for finding or approval."

Accordingly, these exceptions together with others carried forward from the NPRM substantially reduce the cost of compliance with the rule. RSPA finds that the compliance costs will be minimal. A Regulatory Evaluation has been prepared and is available in the Docket.

REGULATORY NOTICES AND ANALYSES

E.O. 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

RSPA believes that the rule will add minimally to the average expense of pipeline design and construction. The information RSPA has collected for the study under section 304 of the Reauthorization Act shows that about 90 percent of hazardous liquid pipelines and 60 percent of gas

transmission lines have been constructed to accommodate the passage of smart pigs. This information confirms RSPA's field experience that most operators are now constructing new and replacement gas transmission lines and hazardous liquid pipelines to accommodate smart pigs.

RSPA lacks detailed information about carbon dioxide pipelines which recently became subject to part 195. However, there are only about 10 such pipeline systems and we understand that they are not expected to grow in mileage or to require a significant amount of replacement in the near term. Thus, those pipelines should not be greatly affected by the revision of §195.120.

Federalism Assessment

This final rule will not have substantial direct effects on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), RSPA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act

There are very few small entities that operate pipelines affected by this rulemaking. To the extent that any small entity is affected, the regulatory evaluation accompanying this rule shows that the costs are minimal. Based on these facts, I certify that under section 605 of the Regulatory Flexibility Act that this final regulation does not have a significant impact on a substantial number of small entities.

List of Subjects

49 CFR Part 190

Administrative practice and procedure, Penalties, Pipeline safety.

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 193

Fire prevention, Pipeline safety, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 195

Anhydrous Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements, Security measures.

In consideration of the foregoing, RSPA amends 49 CFR Parts 190, 192, 193, and 195 as follows:

PART 190 - [AMENDED]

1. The authority citation for Part 190 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1677, 1679a, 1679b, 1680, 1681, 1804, 2002, 2006, 2007, 2008, 2009, and 2010; 49 CFR 1.53.

2. Section 190.9 is added to read as follows:

§ 190.9 Petitions for finding or approval.

(a) In circumstances where a rule contained in Parts 192, 193 and 195 of this chapter authorizes the Administrator to make a finding or approval, an operator may petition the Administrator for such a finding or approval.

(b) Each petition must refer to the rule authorizing the action sought and contain information or arguments that justify the action. Unless otherwise specified, no public proceeding is held on a petition before it is granted or denied. After a petition is received, the Administrator or participating state agency notifies the petitioner of the disposition of the petition or, if the request requires more extensive consideration or additional information or comments are requested and delay is expected, of the date by which action will be taken.

(1) For operators seeking a finding or approval involving intrastate pipeline transportation, petitions must be sent to:

(i) The state agency certified to participate under section 5 of the NGPSA (49 U.S.C. 1674) or section 205 of the HLPSSA (49 App. U.S.C. §2004); or

(ii) Where there is no state agency certified to participate, the Administrator, Research and Special Programs Administration, 400 7th Street SW, Washington DC 20590.

(2) For operators seeking a finding or approval involving interstate pipeline transportation, petitions must be sent to the Administrator, Research and Special Programs Administration, 400 7th Street SW, Washington DC 20590.

(c) All petitions must be received at least 90 days prior to the date by which the operator requests the finding or approval to be made.

(d) The Administrator will make all findings or approvals of petitions initiated under this section. A participating state agency receiving petitions initiated under this section shall provide the Administrator a written recommendation as to the disposition of any petition received by them. Where the Administrator does not reverse or modify a recommendation made by a state agency within 10 business days of its receipt, the recommended disposition shall constitute the Administrator's decision on the petition.

PART 192 - [AMENDED]

3. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

4. In §192.3, the definition of Secretary is removed, and definitions of Administrator and Line section are added to read as follows:

§ 192.3 Definitions

Administrator means the Administrator of the Research and Special Programs Administration or any person to whom authority in the matter concerned has been delegated by the Secretary of Transportation.

* * *

Line section means a continuous run of transmission line between adjacent compressor stations; between a compressor station and storage facilities, between a compressor and a block valve, or between adjacent block valves.

* * *

5. Section 192.9 is revised to read as follows:

§ 192.9 Gathering lines.

Except as provided in §§192.1 and 192.150, each operator of a gathering line, must comply with the requirements of this part applicable to transmission lines.

6. Section 192.150 is added to read as follows:

§ 192.150 Passage of internal inspection devices.

(a) Except as provided in paragraphs (b) and (c) of this section, each new transmission line and each line section of a transmission line where the line pipe, valve, fitting, or other line component is replaced; must be designed and constructed to accommodate the passage of instrumented internal inspection devices.

(b) This section does not apply to:

- (1) Manifolds;
- (2) Station piping such as at compressor stations, meter stations, or regulator stations;
- (3) Piping associated with storage facilities, other than a continuous run of transmission line between a compressor station and storage facilities;
- (4) Cross-overs;
- (5) Sizes of pipe for which an instrumented internal inspection device is not commercially available;
- (6) Transmission lines, operated in conjunction with a distribution system which are installed in Class 4 locations;

(7) Offshore pipelines, other than transmission lines 10 inches or greater in nominal diameter, that transport gas to onshore facilities; and

(8) Other piping that, under 190.9 of this chapter, the Administrator finds in a particular case would be impracticable to design and construct to accommodate the passage of instrumented internal inspection devices.

(c) An operator encountering emergencies, construction time constraints or other unforeseen construction problems need not construct a new or replacement segment of a transmission line to meet paragraph (a) of this section, if the operator determines and documents why an impracticability prohibits compliance with paragraph (a) of this section. Within 30 days after discovering the emergency or construction problem the operator must petition, under §190.9 of this chapter, for approval that design and construction to accommodate passage of instrumented internal inspection devices would be impracticable. If the petition is denied, within 1 year after the date of the notice of the denial, the operator must modify that segment to allow passage of instrumented internal inspection devices.

PART 193 - [AMENDED]

7. The authority citation for Part 193 continues to read as follows:

Authority: 49 App. U.S.C. 1671 et seq.; and 49 CFR 1.53.

8. Section 193.2015 is removed and reserved.

PART 195 - [AMENDED]

9. The authority citation for Part 195 is revised to read as follows:

Authority: 49 App. U.S.C. 2002 and 2015; 49 CFR 1.53.

10. In §195.2, the definition of Secretary is removed, and definition of Administrator is added to read as

follows:

§ 195.2 Definitions.

Administrator means the Administrator of the Research and Special Programs Administration or any person to whom authority in the matter concerned has been delegated by the Secretary of Transportation.

11. In §§195.8, 195.56(a), 195.58, 195.106(e), and 195.260(e), the term "Secretary" is removed and the term "Administrator" is added in its place.

12. Section 195.120 is revised to read as follows:

§ 195.120 Passage of internal inspection devices.

(a) Except as provided in paragraphs (b) and (c) of this section, each new pipeline and each line section of a pipeline where the line pipe, valve, fitting or other line component is replaced; must be designed and constructed to accommodate the passage of instrumented internal inspection devices.

(b) This section does not apply to:

(1) Manifolds;

(2) Station piping such as at pump stations, meter stations, or pressure reducing stations;

(3) Piping associated with tank farms and other storage facilities;

(4) Cross-overs;

(5) Sizes of pipe for which an instrumented internal inspection device is not commercially available;

(6) Offshore pipelines, other than main lines 10 inches or greater in nominal diameter, that transport liquids to onshore facilities; and

(7) Other piping that the Administrator under §190.9 of this chapter, finds in a particular case would be impracticable to design and construct to accommodate the passage of instrumented internal inspection devices.

(c) An operator encountering emergencies, construction time constraints and other unforeseen construction problems need not construct a new or replacement segment of a pipeline to meet paragraph (a) of this section, if the determines and documents why an impracticability prohibits compliance with paragraph (a) of this section. Within 30 days after discovering the emergency or construction problem the operator must petition, under §190.9 of this chapter, for approval that design and construction to accommodate passage of instrumented internal inspection devices would be impracticable. If the petition is denied, within 1 year after the date of the notice of the denial, the operator must modify that segment to allow passage of instrumented internal inspection devices.

Issued in Washington, D.C. on _____

Ana Sol Gutierrez
Acting Administrator
Research and Special Programs
Administration

associations. In Notice 2, RSPA: (1) Stated that its May 12, 1994, suspension (above) of enforcement with respect to hazardous liquid and carbon dioxide pipelines was lifted effective September 30, 1994, and compliance would be enforced; (2) proposed exceptions to the line section modification requirement with respect to certain gas transmission lines in Class 1 and 2 locations; (3) proposed exceptions with respect to all but certain new offshore gas transmission lines; and (4) proposed that an operator replacing line pipe, valve, fitting, or other line component in a gas transmission line in a Class 1 or 2 location would not need to comply with the requirement to modify the line section until February 2, 1995.

There has been extensive comment as well as a formal recommendation by the Technical Pipeline Safety Standards Committee to reconsider the proposals in Notice 2 (above). However, commenters did not object to delaying enforcement of the requirement to modify line sections in gas transmission lines; instead several commenters urged continuation of the stay of enforcement until after completion of the rulemaking proceedings. Thus, in order to evaluate fully these comments, RSPA has decided to continue a limited stay of enforcement for compliance with the final rule with respect to modification of line sections in onshore gas transmission lines, and with respect to new and existing offshore gas transmission lines. This suspension of enforcement will remain in effect until RSPA completes the evaluation of the comments to Notice 2 and sets out the determination with respect to those comments and establishes new compliance dates in a subsequent rulemaking.

Pipeline operators are cautioned that the requirements of the April 12, 1994, final rule for design and construction to accommodate the passage of smart pigs will be enforced for: hazardous liquid and carbon dioxide pipelines; new onshore gas transmission lines; and the actual replaced line pipe, valve, fitting, or other line component in onshore gas transmission lines.

(49 U.S.C. 60102 et seq.; 49 CFR 1.53)

Issued in Washington, DC on January 30, 1995.

George W. Tenley, Jr.,
Associate Administrator for Pipeline Safety.
[FR Doc. 95-2955 Filed 2-6-95; 8:45 am]

Docket No. PS-126; Notice 3

RIN 2137-AB71

PASSAGE OF INSTRUMENTED INTERNAL INSPECTION DEVICES; LIMITED SUSPENSION OF COMPLIANCE DATES

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Limited Suspension of Enforcement for Compliance with Final Rule.

SUMMARY: By final rule published April 12, 1994, RSPA required that new and replaced pipeline facilities be constructed to accommodate inspection by instrumented internal inspection devices commonly known as smart pigs. Two petitioners requested reconsideration of that rule as it applies to

gas pipelines and a stay of the compliance date. In response to these petitions, RSPA issued a Notice of Proposed Rulemaking (NPRM) proposing to modify the rule and extend the compliance dates with respect to certain gas transmission lines. Because of the need to evaluate the numerous comments to proposals in the NPRM, RSPA is unable to complete rulemaking action on that notice by the proposed compliance date with respect to gas transmission lines in less populated areas. This document announces a suspension of enforcement for compliance with the final rule requirements for certain gas transmission lines.

EFFECTIVE DATE: January 30, 1995.

FOR FURTHER INFORMATION

CONTACT: Albert C. Garnett, 202-266-2036, Office of Pipeline Safety, regarding the subject matter of this notice, or Dockets Unit, 202-366-5046, for copies of this notice or other materials in the docket.

SUPPLEMENTARY

INFORMATION: On April 12, 1994, RSPA published a final rule Passage of Internal Inspection Devices (59 FR 17275) that required certain new and existing pipelines on which replacements are made to accommodate the passage of smart pigs. On May 4, 1994, the Interstate Natural Gas Association of America (INGAA) filed a Request for a Stay of the Effective Date [May 12, 1994] of the final rule; Passage of Instrumented Internal Inspection Devices. Additionally, on May 10, 1994, the American Gas Association (AGA) filed a Request for Administrative Stay of the May 12, 1994 effective date and Petition for Reconsideration of RSPA's final rule on Passage of Instrumented Internal Inspection Devices.

On May 12, 1994, RSPA advised INGAA, AGA and the American Petroleum Institute that, until further notice, it would not enforce the requirement that gas and liquid operators remove all obstructions in the line section that prevent the passage of smart pigs whenever the line pipe, valve, fitting or other line component is replaced. However, RSPA stated that the suspension did not affect the requirement, effective on May 12, 1994, that operators design and construct certain new onshore and offshore pipelines or the actual line pipe, valve, fitting or other component replaced to accommodate smart pigs.

On September 30, 1994, RSPA published an NPRM (Notice 2) Passage of Instrumented Internal Inspection Devices (59 FR 49896) that responded to the requests and petitions from the two gas pipeline associations. In Notice 2, RSPA: (1) Stated that its May 12, 1994, suspension (above) of enforcement with respect to hazardous liquid and carbon dioxide pipelines was lifted effective September 30, 1994, and compliance would be enforced; (2) proposed exceptions to the line section modification requirement with respect to certain gas transmission lines in Class 1 and 2 locations; (3) proposed exceptions with respect to all but certain new offshore gas transmission lines; and (4) proposed that an operator replacing line pipe, valve, fitting, or other line component in a gas transmission line in a Class 1 or 2 location would not need to comply with the requirement to modify the line section until February 2, 1995.

There has been extensive comment as well as a formal recommendation by the Technical Pipeline Safety Standards Committee to reconsider the proposals in Notice 2 (above). However, commenters did not object to delaying enforcement of the requirement to modify line sections in gas transmission lines; instead several commenters urged continuation of the stay of enforcement until after completion of the rulemaking proceedings. Thus, in order to evaluate fully these comments, RSPA has decided to continue a limited stay of enforcement for compliance with the final rule with respect to modification of line sections in onshore gas transmission lines, and with respect to new and existing offshore gas transmission lines. This suspension of enforcement will remain in effect until RSPA completes the evaluation of the comments to Notice 2 and sets out the determination with respect to those comments and establishes new compliance dates in a subsequent rulemaking.

Pipeline operators are cautioned that the requirements of the April 12, 1994, final rule for design and construction to accommodate the passage of smart pigs will be enforced for: hazardous liquid and carbon dioxide pipelines; new onshore gas transmission lines; and the actual replaced line pipe, valve, fitting, or other line component in onshore gas transmission lines.

(49 U.S.C. 60102 et seq.; 49 CFR 1.53)

Issued in Washington, DC on January 30, 1995.

George W. Tenley, Jr.,
Associate Administrator for Pipeline Safety.
[FR Doc. 95-2955 Filed 2-6-95; 8:45 am]

Docket No. PS-101; Amdts. 192-73 and 195-54

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS-101; Amendments 192-73 and 195-54]

RIN 2137-AB47

EXCAVATION OF DAMAGE PREVENTION PROGRAMS FOR GAS AND HAZARDOUS LIQUID AND CARBON DIOXIDE PIPELINES

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule extends the existing excavation damage prevention requirements for gas pipelines in urban areas to gas pipelines in rural areas; establishes excavation damage prevention program requirements for hazardous liquid and carbon dioxide pipelines; requires, with limited exceptions, line markers for gas transmission lines in urban areas; and permits smaller lettering on line markers for hazardous liquid and carbon dioxide pipelines in heavily developed urban areas.

This final rule is accompanied by a notice of proposed rulemaking (NPRM) (Docket No. PS-101A), which proposes mandatory participation in qualified one-call systems by pipeline operators. This final rule and the NPRM are intended to reduce excavation damage, the largest single cause of reportable pipeline accidents.

EFFECTIVE DATE: This final rule takes effect April 19, 1995.

FOR FURTHER INFORMATION

CONTACT: Albert C. Garnett, 202-266-2036, or Christina M. Sames, 202-366-4561, regarding the content of this final rule, or the Dockets Unit, 202-366-5046, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION:

Related Document

The Secretary of Transportation pursuant to 49 U.S.C. 60114, is required to establish minimum standards for one-call systems. RSPA implemented those requirements in 49 CFR Part 198 and has prepared a NPRM titled Mandatory Participation in Qualified One-Call Systems by Pipeline Operators (Docket No. PS-101A).

The NPRM proposes to amend this final rule by requiring that operators of interstate and intrastate pipelines participate in qualified one-call systems. However, the NPRM proposes less stringent

standards for the participation of small entities (including operators of master meter systems) whose primary activity does not include the transportation of gas.

Although RSPA anticipates these regulations will be amended by a final rule addressing mandatory participation in qualified one-call systems, RSPA sees no reason to delay the regulations developed in this final rule. In the meantime, RSPA urges pipeline operators to voluntarily participate in qualified one-call systems that cover the areas where their pipeline facilities are located.

Excavation Damage

Excavation damage is the largest single cause of reportable gas and hazardous liquid pipeline accidents. During the period of January 1, 1988 through December 31, 1993, 33 percent or 481 of a total of 1,456 reported gas pipeline incidents were caused by excavation damage by persons other than the operator or its contractor. These incidents resulted in 35 deaths, 151 personal injuries, and about \$42,570,000 in property damage. Of these 481 reported excavation damage incidents, 178 incidents or 37 percent occurred in Class 1 and 2 locations (class locations are described in 49 CFR 192.5) where damage prevention programs have not been required. These Class 1 and 2 incidents resulted in 7 deaths, 40 personal injuries, and about \$10,912,000 in property damage.

Similarly, during the 1988-1993 period, 20 percent or 245 of a total of 1,221 reported hazardous liquid pipeline accidents were caused by excavation damage by persons other than the pipeline operator or its contractor. These accidents resulted in 3 deaths, 46 personal injuries, and about \$48,821,000 in property damage. In addition, about 164,500 barrels of hazardous liquids were reported to have been spilled as a result of these accidents.

The above statistics do not account for all of the gas pipeline incidents and hazardous liquid pipeline accidents that have occurred from 1988 to 1993. Sections 191.3 and 195.50 exempt certain gas pipeline incidents and hazardous liquid pipeline accidents from the reporting requirements. Thus, the actual number of personal injuries and the amount of property damage resulting from excavation damage by persons other than the operator or its contractor can be assumed to be higher.

Existing Gas Damage Prevention Program

The most widely accepted approach to reducing excavation damage to underground pipelines and other underground facilities is a formalized damage prevention program that employs a one-call system. RSPA permits this approach for gas pipelines under the current § 192.614, Damage Prevention Program. Section 192.614 (a) allows a pipeline operator to perform any of the duties required by § 192.614 (b) through participation in a one-call system. Such participation does not relieve the operator of responsibility for compliance with any requirements of § 192.614 that are not satisfied by the one-call system.

The current rule requires each gas pipeline operator, with limited exceptions, to establish and implement a written damage prevention program for buried gas pipelines in highly populated or urban areas, specifically Class 3 and 4 locations. Damage prevention programs have not been required for gas pipelines in Class 1 and 2 locations or for hazardous liquid and carbon dioxide pipelines subject to Part 195. Also excluded from this current requirement for a damage prevention program are permanently marked pipelines in certain Class 3 locations (described in § 192.5 (d) (2)), pipelines to which access is physically controlled by the operator, petroleum gas pipelines subject to § 192.11, and master meter systems as defined in § 191.3.

Gas pipeline operators in Class 3 and 4 locations, with certain exclusions previously discussed, are currently required by § 192.614 to: (1) identify excavators normally operating in the area where the pipeline is located; (2) provide notification to the public and actual notification to excavators of the

programs existence and purpose, as well as how to learn the location of underground pipelines before excavation activities begin; (3) provide a means for receiving and recording notification of planned excavations; (4) if an operator has buried pipelines in the area of planned excavation, provide actual notification to a person who has given notice of intent to excavate of the type of temporary markings to be provided and how to identify them; (5) provide temporary marking of buried pipelines in the area of the excavation in a timely manner; and (6) inspect, as frequently as necessary, pipelines that the operator has reason to believe could be damaged by the excavation activities and, in case of blasting, include leakage surveys. An operator may perform any of these six duties through participation in a one-call system, but participation does not relieve the operator of responsibility for compliance with § 192.614.

One-Call Systems

A one-call system is a communication system established individually or jointly by utilities, government agencies, or other operators of underground facilities to provide a single telephone number (other methods of communication are also used) for excavators and the general public to call to notify participating members of their intent to engage in excavation activities. Notices of intent to excavate are received by the operational center and transmitted to the operators of underground pipeline facilities and other underground facilities that participate in the system. Upon receipt of notices of intended excavation activities, participating operators that have underground facilities in that area arrange for the timely identification and temporary marking of their underground facilities. Underground operators may inspect the site during the excavation activities to ensure the safety of their underground facilities.

National One-Call Campaign

Presently, there are 74 one-call systems in the United States operating in 48 states and the District of Columbia. These one-call systems may not meet all of the qualifications of a one-call notification system, as defined in § 198.39. Two states and Puerto Rico are currently without a one-call system.

Approximately 45 states and the District of Columbia have damage prevention laws that, to a varying extent, govern the activities performed by excavators and persons locating and temporarily marking underground facilities. However, most of the existing state damage prevention programs do not meet all of the requirements of § 198.37, State one-call damage prevention program.

To address the problem of incomplete national one-call coverage and the deficiencies in some of the existing one-call systems, RSPA has launched a national campaign to encourage states to adopt improved one-call notification systems. The national campaign will target states for concentrated outreach to assist these states in their efforts to upgrade their current one-call systems. The national campaign will also work with selected states where there is a need to strengthen the one-call legislation or where a state is currently without one-call legislation.

Notice of Proposed Rulemaking

To reduce the incidence of excavation damage, RSPA issued a Notice of Proposed Rulemaking (NPRM) titled Natural Gas and Hazardous Liquid Pipeline Damage Prevention Program (53 FR 24747, June 30, 1988). The NPRM proposed to (1) Delete the damage prevention program exemption for buried onshore gas pipelines in Class 1 and 2 locations, and for gas pipelines in Class 3 locations that are marked in accordance with § 192.707; (2) require that hazardous liquid pipeline operators carry out similar damage prevention programs for their buried onshore pipelines; and (3) require that gas pipeline operators permanently mark their mains and transmission lines in Class 3 and 4 locations, except where

placement of a marker is impractical.

Presentation to Advisory Committees

RSPA presented the three proposals listed above to its two pipeline advisory committees, the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC).

On September 13, 1988, the TPSSC discussed and unanimously supported extending § 192.614 to cover onshore gas pipelines in Class 1 and 2 locations. However, the TPSSC generally opposed the proposal requiring line markers over mains and transmission lines in Class 3 and 4 locations. Some members argued the proposed marking would be too burdensome, and that markers in these class locations might cause an excavator to rely on the markers for location information instead of using the one-call system. However, two members stated their large gas companies occasionally install markers in Class 3 and 4 locations, as this final rule will now generally require for transmission lines.

On September 14, 1988, the THLPSSC voted 6 to 4 against the proposed rule to require hazardous liquid pipeline operators to establish and carry out damage prevention programs over the entire length of their pipelines. Opposition stemmed from the need to identify on a current basis the persons who normally engage in excavation activities in rural areas and the problem of identifying excavators who might come from some distant location or who recently entered the excavation business. A committee member also expressed concern over the exact meaning of as often as needed, language in the proposed rule which refers to the frequency of notifying the public of the damage prevention program and leakage surveys applicable to the liquid transported, language which refers to the type of inspection done on pipelines that might have been damaged by blasting.

Additional Recommendations

The Transportation Research Board (TRB) proposed extending the excavation damage prevention program requirements to liquid pipelines. TRB is a unit of the National Research Council and provides public comment on scientific and technical questions of national importance. Their proposal was published in a report titled Special Report 219 - Pipelines and Public Safety. The report states that although most gas and liquid transmission pipelines were constructed in undeveloped areas and buried with 2 1/2 to 3 feet of cover to prevent disturbance, development is intruding on these high pressure pipelines and is increasing the risk of failures from excavation damage. In the section of the Executive Summary titled Damage Prevention and Public Awareness Programs, the report identifies significant gaps in existing damage prevention measures. TRB's first recommendation for closing these gaps was to extend the gas pipeline damage prevention program to liquid pipelines. That recommendation is one of the principal thrusts of this final rule.

Comments on the NPRM

RSPA received 81 comments on the three proposed rule changes. The commenters included gas and liquid pipeline operators, governmental agencies, and industry trade associations.

Comments - Damage Prevention Program, part 192

Of the 41 comments received addressing the proposal to extend the existing requirement for a damage prevention program in § 192.614 to Class 1 and 2 locations and to marked pipelines in Class 3 locations, 93 percent, including a gas industry trade association, expressed full or partial support, and 7

percent were opposed. Among those in support, a large gas transmission company commented that the proposal would have no significant impact on its operations because it participates in one-call systems regardless of class location, or it conducts similar programs in Class 1 and 2 locations where one-call systems are not yet operative. A large gas distribution company supported the proposal because the company voluntarily includes Class 1 and 2 locations in its current damage prevention program and believes customers and the general public expect the expenditure.

Among those opposed, a large gas distribution company argued that because conditions in urban (Class 3 and 4 locations) and rural (Class 1 and 2) locations are completely different, different types of damage prevention programs are logical and reasonable and have evolved to meet these special conditions. The company commented that requiring the same damage prevention program in both areas defies logic and cannot be cost-effective. In particular, the company stated that the temporary marking of pipelines would be more expensive and less cost-effective in rural areas because of the greater distances to be traveled.

As indicated above, 37 percent of the gas pipeline excavation damage reported over the 1988 to 1993 period occurred in Class 1 and 2 locations and resulted in 7 deaths, 40 personal injuries, and millions of dollars in property damage. Therefore, RSPA rejects the argument that applying the same damage prevention program to both urban and rural areas defies logic and cannot be cost-effective. Furthermore, the overwhelming support expressed for extension of the gas damage prevention program rule supports RSPA's determination that this action is warranted to reduce the incidence of excavation damage.

Comments - Line Markers, Part 192

Of the 67 comments received regarding the proposal to require permanent line markers for gas mains and transmission lines in Class 3 and 4 locations except where placement is impractical, 22 percent indicated full or partial support and 78 percent were opposed. Those favoring the proposal included the National Transportation Safety Board (NTSB). NTSB is the Federal agency responsible for investigating and determining the cause of pipeline accidents involving a death, substantial property damage, or significant safety issues. NTSB stated that while it may not be practicable to mark pipelines in some Class 3 and 4 locations, line markers should generally be required for gas transmission lines. Similarly, a gas distribution company commented that additional line markers may make sense when elevated pressures are involved, as is often the case with transmission lines, or when pipelines are installed in unconventional places. A state regulatory agency commented that prior to adoption of the existing Class 3 and 4 location line marking exception, many operators were required to mark mains and transmission lines in Class 3 and 4 locations. The state agency pointed out that many operators have continued this practice even though it is no longer required. The agency said that marking pipelines in these areas is not impractical and provides, in conjunction with the damage prevention program, an extra line of defense against excavation damage.

Several of those opposed to requiring line markers argued the proposed exception for locations where placement of a marker is impractical is imprecise and would result in continual differences of opinion between operators and government inspectors. Many commenters felt that pipeline markers are useful for indicating the presence of a buried pipeline within a rural right-of-way but are of little benefit in urban areas where excavators are generally aware of the presence of buried utilities and of the need to call before they dig. Many commenters also felt that excavators in urban areas might get a false impression of the exact location of buried pipelines from the placement of line markers and assume they can dig without contacting a one-call system or the pipeline operator for temporary marking. Several commenters pointed out that property owners and planning commissions would resist installation of pipeline markers in Class 3 and 4 locations for aesthetic reasons. Also, a large gas distribution operator

commented that while marker posts at every road crossing in a rural setting are reasonable, marker posts at every street intersection in cities and suburbs are unreasonable because of the very large number of pipeline street crossings.

This final rule has not adopted the proposal to require gas mains be marked in Class 3 and 4 locations. Because mains generally operate at lower pressures than transmission lines, they usually pose less of a threat to public safety in the event of excavation damage. Thus, RSPA believes there is lesser need for mains to be marked as a backup to damage prevention programs. Also, RSPA agrees with TPSSCs and the commenters view that, because of the vast number of mains to be marked in Class 3 and 4 locations, compliance would be unduly burdensome and line markers would likely be more expensive to install and maintain.

This final rule has adopted the line marker requirement for gas transmission lines in class 3 and 4 locations, except where placement of a marker is impractical. RSPA believes this is a reasonable means of advancing safety without imposing an undue burden on the operators. There are relatively few gas transmission lines in Class 3 and 4 locations and some of these gas transmission operators already voluntarily mark their pipelines. RSPA agrees with these commenters who indicated that these line markers provide an extra line of defense against excavation damage.

Further support for requiring gas transmission lines in Class 3 and 4 locations to be marked is found in § 195.410. Section 195.410 requires line markers for hazardous liquid pipelines in urban areas with specific exceptions for heavily developed urban areas, such as downtown business centers. Many of the objections to placing line markers in urban areas have been resolved by permitting adjustment of the markers location. RSPA believes that some line markers installed to mark gas transmission lines in Class 3 and 4 locations could be suitably flush mounted on streets, sidewalks, and other appropriate surfaces to minimize the situations where placement of standing markers would be objectionable. When considering the design of flush mounted gas pipeline markers, it may be helpful to note § 192.707 (d) (1) currently permits operators to use less than standard letter size on line markers in heavily developed urban areas. This final rule amends § 195.410 (a) (2) (i) to provide the same flexibility for the lettering size on line markers in similar areas for hazardous liquid and carbon dioxide pipelines.

A few commenters objected to the phrase in § 192.707 (b) of where placement of a marker is impractical. Commenters stated the phrase is too indefinite and should be clarified. RSPA believes the phrase is appropriate as it has been applied successfully to allow operators limited discretion in determining where to install markers for buried gas main and transmission lines in Class 3 and 4 locations. The phrase will continue to allow operators limited discretion when a marker would be extremely difficult or expensive to install or maintain, would create a dangerous condition, or would be ineffective because it would be obscured or otherwise would not serve to reduce the likelihood of excavation type damage to the pipeline.

RSPA is not persuaded by the commenters and TPSSCs view that the presence of markers in Class 3 and 4 areas might cause excavators to rely on the location of the marker and to dig without notifying the one-call system. No evidence was offered to support this view and it has not been true for markers in Class 1 and 2 locations. Pipeline markers are installed to warn excavators of the presence of buried pipelines, to provide a telephone number to obtain more accurate location information, and to allow persons in the area to report indications of other problems relating to the safety of the pipeline.

Comments - Damage Prevention Program, Part 195

Of the 16 commenters who responded to the proposal to require hazardous liquid pipelines carry out damage prevention programs, 15 commenters indicated full or partial support and only one commenter was opposed. Of those expressing support, a large products transmission company commented it has always advocated practical, cost effective, damage prevention programs and has made the locations of

its facilities known to landowners, developers, and excavators. Additionally, its company policy has been to provide inspectors during and after excavation activities. An industry trade association replied that it concurs with RSPA that federal regulations for the development of damage prevention programs should be applied to hazardous liquid pipeline operators. The one commenter opposed, a hazardous liquid pipeline company, said it would be impossible to know of every backhoe operation in the area of its pipelines. This company further stated that any obligation to prepare an excavator list should be limited to checking county licenses every 4 to 6 months.

RSPA is not swayed by the THLPSSCs and the commenters concern about the difficulty of identifying excavators in rural areas. Although some excavators may be difficult to identify, operators are only required to identify excavators by reasonable available means. Regarding one commenters suggestion that excavator lists be assembled only from county licenses, RSPA believes that this procedure could be a supplementary approach to identifying and notifying excavators of the damage prevention program, since not all counties or other political subdivisions require licenses for all excavators in their jurisdiction. It would generally be more helpful for operators to contact the one-call centers operating in the area of their pipeline for excavator information or to look for excavator advertisements in publications such as the local yellow pages and newspapers.

One THLPSSC member questioned the meaning of the phrase as often as needed, currently in § 192.614 (b) (2) and proposed in § 195.442 (b) (2), to describe the frequency of notification to the public and excavators to make them aware of the damage prevention program. This phrase, which is retained, is intended to require that operators provide additional notice when damage appears to be caused by persons unaware of the damage prevention program. More frequent advertisement would be expected to have a positive effect on program results.

In proposed § 195.442 (b) (6) (ii), the phrase leakage surveys applicable to the liquid transported was intended to indicate the required leakage surveys must be appropriate for the commodity being transported. However, in view of the concern expressed by a THLPSSC member over its meaning, RSPA has deleted the term from § 195.442 (b) (6) (ii) and has replaced it with the comparable performance based standard of the gas pipeline damage prevention program rule.

Amendments

Extending the Damage Prevention Program, Part 192

RSPA is amending § 192.614 to require that operators of gas pipelines in Class 1 and 2 locations, with limited exception, carry out damage prevention programs. The existing exception for Class 1 and 2 locations under § 192.614 (c) (1) is removed and replaced with an exception for pipelines located offshore.

The operators affected by this action will be given 6 months to implement their damage prevention program.

The existing exception under § 192.614 (c) (2) for pipelines in Class 3 locations and marked in accordance with § 192.707 is also removed. The operators affected by this action will be given 12 months to mark the location of their pipelines. Pipelines to which access is physically controlled by the operator and pipelines that are part of a petroleum gas system subject to § 192.11 or part of a distribution system operated by a person in connection with that persons leasing of real property or by a condominium or cooperative association would still be exempt. RSPA is taking this action after considering the high incidence of excavation-related accidents in Class 1 and 2 locations, the generally recognized efficacy of damage prevention programs, and the favorable comments received in response to the NPRM.

Extending Line Markers, Part 192

Because of the continuing incidence of excavation damage in Class 3 and 4 locations and the extra risk posed by damage to transmission lines in these areas, RSPA is amending § 192.707 to require that gas operators place and maintain line markers, as close as practical, over buried transmission lines in Class 3 and 4 locations except where placement is impractical. Accordingly, the exception under § 192.707 (b) (2) for line markers over buried pipelines in Class 3 and 4 locations where a § 192.614 damage prevention program is in effect is revised to limit the exception to mains and to transmission lines where placement of a marker is impractical.

Providing Flexibility in Lettering Requirements and Placement of Line Markers, Part 195

RSPA has provided flexibility in the lettering requirements listed under § 195.410 (a) (2) by excepting the lettering on line markers for hazardous liquid and carbon dioxide pipelines in heavily developed urban areas from the minimum height and stroke requirements. RSPA has also provided flexibility in the placement of markers by changing the word impracticable to impractical under § 195.410 (b) (2) (i). These exceptions were not proposed in the NPRM but will provide hazardous liquid and carbon dioxide operators the same flexibility as is currently afforded natural gas pipeline operators in § 192.707 (b) (2) (i) and (d) (1). These revisions to the current regulations will provide uniform lettering requirements and uniform marker placement for operators of natural gas, hazardous liquid, and carbon dioxide pipelines.

Establishing Damage Prevention Programs, Part 195

RSPA is amending Part 195 by adding § 195.442 to require that operators of buried hazardous liquid and carbon dioxide pipelines carry out a written damage prevention program similar to the current § 192.614 requirements for natural gas pipelines. The operators affected by this action will be given 6 months to implement their damage prevention program. This action is warranted due to the excavation damage accident rate for hazardous liquid pipelines and the demonstrated effectiveness of damage prevention programs. Commenters overwhelmingly supported this proposal. TRBs Special Report 219 - Pipelines and Public Safety, (referenced above), also supported amending the regulations to require damage prevention programs for liquid pipelines.

Rulemaking Analyses

E.O. 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3 (f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. The final rule is also not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

RSPA has prepared a regulatory evaluation to assess the costs and associated benefits that are expected to result from this final rule. The regulatory evaluation shows net benefits resulting from this final rule of between \$1,375,000 and \$1,991,000 per year. A copy of the regulatory evaluation is available in this docket.

Federalism Assessment

This rulemaking action will not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 126112 (52 FR 41685; October 30, 1987), RSPA has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

Based on the facts available about the anticipated impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this action will not have a significant economic impact on a substantial number of small entities; i.e., gas pipeline operators, small hazardous liquid pipeline operators, or small carbon dioxide pipeline operators. This determination is based on the following: (1) RSPA is not aware of any small gas, hazardous liquid, or carbon dioxide transmission companies; (2) small operators of pipelines that are part of a petroleum gas system subject to § 192.11 or are a part of a distribution system operated in connection with the leasing of real property, including master meter operators, are not affected by this regulatory action, (3) while there are many small gas distribution operators, they are currently required to have excavation damage prevention programs in the urban areas where the majority of their customers are located.

Paperwork Reduction Act

This final rule contains information collection requirements for written damage prevention programs for gas pipelines in rural areas under the revised § 192.614 and for hazardous liquid and carbon dioxide pipelines in urban and rural areas under the new § 195.442. None of these information collection requirements would be prepared for the purpose of submittal to RSPA. The information collection requirements associated with this final rule are being submitted to OMB for approval in accordance with 44 U.S.C. Chapter 35 under the following:

OMB No: 2137-0049 for the added burden to gas pipelines and under New for hazardous liquid and carbon dioxide pipelines;

Administration: DOT, RSPA;

Title: Excavation Damage Prevention Programs for Gas and Hazardous Liquid and Carbon Dioxide Pipelines;

Need for Information: To reduce excavation damage, the largest single cause of pipeline accidents;

Proposed Use of Information: For preparation of written damage prevention programs for gas pipelines in rural areas under the revised § 192.614 and for hazardous liquid and carbon dioxide pipelines under the new § 195.442;

Frequency: On occasion;

Burden Estimate: For 2137-0049 (gas pipeline operators): 30,428 hrs annually will be added to the current burden to industry; under NEW (hazardous liquid pipeline operators): 19,580 hrs annually;

Respondents: Operators subject to 49 CFR parts 192 and 195;

Form(s): None;

Average Burden Hours per Respondent: 13 hrs (gas pipeline operators); 77 hrs (hazardous liquid pipeline operators).

For further information contact: The Information Management Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street SW, Washington, DC 20590, Tel. (202) 366-4735. Comments on the information collection requirements should be submitted to: OMB, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for DOT, RSPA.

It is requested that comments sent to OMB also be sent to the RSPA rulemaking docket for this final rule.

List of Subjects

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 192 and 195 are amended as follows:

PART 192 [AMENDED]

1. The authority citation for Part 192 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60118; 49 CFR 1.53.

2. In § 192.614, paragraph (c) (1) and (c) (2) are revised to read as follows:

§ 192.614 Damage prevention program.

• • •

(c) • • •

(1) Pipelines located offshore.

(2) Pipelines, other than those located offshore, in Class 2 or 2 locations until September 20, 1995.

• • •

3. Section 192.707 is amended by revising paragraph (b) to read as follows:

§ 192.707 Line markers for mains and transmission lines.

• • •

(b) Exceptions for buried pipelines. Line markers are not required for the following pipelines:

(1) Mains and transmission lines located offshore, or at crossings of or under waterways and other bodies of water.

(2) Mains in Class 3 or Class 4 locations where a damage prevention program is in effect under § 192.614.

(3) Transmission lines in Class 3 or 4 locations until March 20, 1996.

(4) Transmission lines in Class 3 or 4 locations where placement of a line marker is impractical.

• • •

PART 195 [AMENDED]

4. The authority citation for Part 195 is revised to read as follows:

Authority: 49 U.S.C. 60102, 60104, 60108, 60109; 49 CFR 1.53.

5. Section 195.410 is amended by removing the term impracticable from paragraph (b) (2) (i) and adding impractical in its place, and by revising paragraph (a) (2) to read as follows:

§ 195.410 Line markers.

(A) * * *

(2) The marker must state at least the following on a background of sharply contrasting color:

(i) The word Warning, Caution, or Danger followed by the words Petroleum (or the name of the hazardous liquid transported) Pipeline, or Carbon Dioxide Pipeline, all of which, except for markers in heavily developed urban areas, must be in letters at least one inch high with an approximate stroke of one-quarter inch.

(ii) The name of the operator and a telephone number (including area code) where the operator can be reached at all times.

* * * * *

6. Section 195.442 is added to Subpart F to read as follows:

§ 192.442 Damage prevention program.

(a) After September 20, 1995, and except for pipelines listed in paragraph (c) of this section, each operator of a buried pipeline shall carry out in accordance with this section a written program to prevent damage to that pipeline by excavation activities. For the purpose of this section, excavation activities include excavation, blasting, boring, tunneling, backfilling, the removal of above ground structures by either explosive or mechanical means, and other earth moving operations. An operator may comply with any of the requirements of paragraph (b) of this section through participation in a public service program, such as a one-call system, but such participation does not relieve the operator of responsibility for compliance with this section.

(B) The damage prevention program required by paragraph (a) of this section must, at a minimum:

(1) Include the identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located.

(2) Provide for notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (b) (1) of this section of the following, as often as needed to make them aware of the damage prevention program:

(i) The programs existence and purpose, and

(ii) How to learn the location of underground pipelines before excavation activities are begun.

(3) Provide a means of receiving and recording notification of planned excavation activities.

(4) If the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings.

(5) Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins.

(6) Provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities:

(i) The inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline; and

(ii) In the case of blasting, any inspection must include leakage surveys.

(c) A damage prevention program under this section is not required for the following pipelines:

(1) Pipelines located offshore.

(2) Pipelines to which access is physically controlled by the operator.

Issued in Washington, DC on February 17, 1995.

Ana Sol Gutierrez,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 95-6723 Filed 3-17-95; 8:45 am]

Amdt. 192-74; Docket PS-135

DEPARTMENT OF TRANSPORTATION

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

49 CFR Part 192

**[Docket PS-135; Amdt. 192-74]
RIN 2137-AC32**

Customer-Owned Service Lines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final Rule.

SUMMARY: This action requires operators of gas service lines who do not maintain buried customer piping up to building walls or certain other locations to notify their customers of the need to maintain that piping. Congress directed DOT to take this action in view of service line accidents. By advising customers of the need to maintain their buried gas piping, the notices may reduce the risk of further accidents.

EFFECTIVE DATE: September 14, 1995

FOR FURTHER INFORMATION CONTACT: L. M. Furrow, (202) 366-2392, regarding the content of this document, or the Dockets Unit (202) 366-4453 for copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

I. Background

A. Customer Piping

RSPA's gas pipeline safety standards (49 CFR Part 192) apply to the distribution of gas up to the end of a pipeline operator's service line. A service line, as defined in §192.3, is a distribution line that begins at a common source of supply, usually a main, transmission line, or gathering line. The end of a service line is a customer meter or a connection to a customer's piping, whichever is farther downstream. If there is no meter, the connection to a customer's piping marks the end of a service line. A customer is any person who contracts with an operator to receive gas for consumption. Customer's piping (or customer piping) refers to piping not owned by an operator through which a customer receives gas.

When operators install customer meters, they usually install them outdoors next to the building that houses the customer's principal gas utilization equipment. If that equipment is not inside a building, the meter may be installed next to the equipment. Either of these installations may leave only a short segment of exterior customer piping between the end of the operator's service line and the building or

equipment. Sometimes, however, operators install customer meters farther away from buildings or equipment, perhaps at a private property line or fence. The result is a much longer length of exterior customer piping.

Regardless of length, customer piping downstream from an operator's service line is not subject to the maintenance standards of Part 192. However, according to the National Transportation Safety Board, twenty-two states now require operators to monitor portions of customer piping. Also, many operators voluntarily maintain customer piping up to building walls. Still, for much customer piping, maintenance is the responsibility of customers or piping owners, not operators of service lines. In this regard, RSPA is preparing a report on the safety of customer piping located downstream from service lines to see if there is a need for further legislative or regulatory action. The report is required by section 115(b) of the Pipeline Safety Act of 1992 (Pub. L. 102-508; 106 Stat. 3296).

B. Statutory Mandate

During a 7-month period beginning September 16, 1988, a series of five service line accidents killed four people and injured 16 others in Kansas and Missouri. The accidents happened on service lines supplying gas to homes and were due to corrosion and other causes. As a result, Congress became concerned about the safety of gas piping leading up to buildings. Congress felt that customers of distribution pipeline operators may not understand the need for basic maintenance of customer piping.

Therefore, as provided by 49 U.S.C. §60113(a) (formerly section 18(b) of the Natural Gas Pipeline Safety Act of 1968), Congress directed DOT to-

prescribe regulations requiring an operator of a natural gas distribution pipeline that does not maintain customer-owned natural gas service lines up to the building walls to advise its customers of -

- (1) the requirements for maintaining those lines;
- (2) any resources known to the operator that could assist customers in carrying out the maintenance;
- (3) information the operator has on operating and maintaining its lines that could assist customers; and
- (4) the potential hazards of not maintaining the lines.

C. Rulemaking Proposal

In response to this Congressional mandate, RSPA published a notice of proposed rulemaking (NPRM)(59 FR 5168; February 3, 1994) on customer notification. The NPRM proposed to define the piping covered by the mandate ("covered piping"). The NPRM also proposed to establish the details of advice that operators who do not maintain covered piping up to building walls would have to give their customers.

In a supplemental notice of proposed rulemaking (SNPRM)(59 FR 13300; March 21, 1994), RSPA expanded the proposed rules to cover certain exterior customer piping that is above ground. The SNPRM also clarified that the proposed rules were not limited to operators who are local distribution companies. Other operators (primarily transmission companies) that supply gas to customers through service lines were covered as well. RSPA also announced in the SNPRM that the proposed rules did not apply to customer piping that branches from a customer's primary gas supply line to supply gas to secondary equipment, such as pool heaters and yard lanterns.

D. Advisory Committee Review

RSPA presented the NPRM and SNPRM for deliberation by the Technical Pipeline Safety Standards Committee (TPSSC) at a meeting in Washington, D.C. on May 11, 1994. TPSSC is RSPA's statutory advisory committee for gas pipeline safety. The committee comprises 15 members, representing industry, government, and the public, who are technically qualified to evaluate gas pipeline safety. TPSSC's report of its deliberation is available in the docket of this proceeding.

TPSSC voted unanimously to find the proposed rules technically feasible, reasonable, and practicable, provided RSPA made the following changes: (1) delete information on age, location, and material of customer piping from proposed §192.16(a)(4); (2) when customer piping does not enter a building, end covered piping at the point of custody transfer; (3) apply the proposed rule only to buried residential and small-commercial lines; and (4) delete "transmission or" from proposed §192.16(a) to limit the rule to distribution operators. The next section discusses how we handled TPSSC's recommended changes in developing the final rule.

II. Discussion of Comments and TPSSC Recommendations

A. Commenters

We received written comments from 57 persons in response to the NPRM and SNPRM. The comments came from: 47 pipeline operators; 5 state pipeline safety agencies (Maryland, Kansas, Iowa, Michigan, and Missouri); 4 trade associations (American Gas Association (AGA), Interstate Natural Gas Association of America (INGAA), Western Mobilehome Parkowners Association (WMPA), and Texas Gas Association (TGA)); and 1 federal agency (National Transportation Safety Board (NTSB)).

Most commenters directed their remarks to specific issues. This section of the preamble discusses our resolution of significant issues in light of comments and TPSSC recommendations.

B. The Term "Customer-Owned Service Line"

The mandate applied to customer piping Congress called "customer-owned service lines." So the NPRM and SNPRM used this term to designate the customer piping covered by the proposed rules.

Despite its statutory origin, many commenters felt the term "customer-owned service line" would be confusing in a Part 192 regulation. They said many service lines under Part 192 include piping owned by customers. Consequently, they argued the term was too similar to "service line" to distinguish customer piping not regulated by Part 192 from service lines regulated by Part 192. The commenters suggested as alternatives the names "supply pipe," "yard line," "fuel line," and "customer-owned piping."

We agree that "customer-owned service line" would be a misnomer in Part 192. The term could easily be confused with "service line," because some customers own the portion of a service line on private property between a distribution main and customer meter. Also, other customers (particularly tenants) may not own any of the piping through which they receive gas from an operator. For these reasons, we did not use the term "customer-owned service line" in the final rule.

At the same time, we did not name covered piping as commenters suggested. Since Part 192 currently refers to piping beyond the end of a service line as "customer's piping" (see §192.3, service line), referring to that piping by another name would be confusing. Instead, to designate piping covered by the final rule, we used "customer's piping" with other descriptive wording (§192.16(a)).

C. End of Covered Piping

To delineate the customer piping covered by the proposed rules, the NPRM and SNPRM defined the term "customer-owned service line." The definition proposed was: "a pipeline that transports natural gas or petroleum gas from a service line to (1) an exterior wall of a building, or (2) end-use equipment" (proposed amendment to §192.3).

Most commenters thought the proposed end of covered piping was unclear. One concern was the end of covered piping when customer piping leads to more than one building. Another concern was the end when customer piping leads both to a building and to outdoor equipment, such as a lantern. Still another concern was the end when customer piping does not enter a building, which happens at some plants. In regard to plants, AGA argued the end should be at a location equivalent to a building wall, such as the plant fence or point of custody transfer. Similarly, TPSSC recommended ending covered piping at a custody transfer point when there is no building.

As stated above, we intended the proposed rules to apply to customers' primary gas supply lines. Branch lines that serve pool heaters, yard lanterns, or other types of secondary equipment were not intended to be covered. The final rule (§192.16(a)) clarifies this point by covering customer piping up to gas utilization equipment only when the customer's piping does not enter a building. Also, to avoid the confusion of where covered piping ends when customer piping enters more than one building, the final rule refers to the first building. We used the term "gas utilization equipment" instead of "end-use equipment" for consistency with present terminology in Part 192 (e.g., §192.197(a)(5)).

When customer piping does not enter a building, we agree that a perimeter fence (or wall) surrounding the gas utilization equipment serves the purpose of a building wall under the mandate. Thus, when there is no building, under the final rule, covered piping ends at the gas utilization equipment or at the intersection of the first fence (or wall) that encloses the equipment (if such a fence (or wall) exists). The fence (or wall) may surround the plant, part of the plant, or just the equipment.

We did not adopt custody transfer to demarcate the end of covered piping when customer piping does not enter a building. Because custody transfer arguably occurs when gas enters piping not owned by the operator, none of the customer piping downstream from a service line would come under the notification rule.

D. Aboveground Customer Piping and Short Sections of Piping Between Meters and Buildings

Many commenters, including AGA and Missouri, recommended that the final rule apply only to buried piping. Generally, the commenters felt that aboveground piping presents less risk than buried piping. The commenters said operators or customers would see any deteriorated piping or they would smell any leaks. Further, the commenters envisioned that any leaks would go directly to the atmosphere and not migrate into a building. TPSSC also recommended that we limit the final rule to buried piping.

The chief reason, however, that most commenters wanted to restrict the final rule to buried piping was

to reduce the number of customers that would have to be notified. This point was emphasized by AGA at the TPSSC meeting, convincing TPSSC to overturn an earlier vote against excluding aboveground piping. Millions of additional customers would have to be notified if aboveground piping were covered, since most service lines, including lines that end at meters next to buildings, connect to short sections of aboveground piping. For example, one operator said it would have to send 1.3 million notices if the rule covered aboveground piping, compared with 68,000 notices if only buried piping were covered. This operator argued that since the accidents that produced the mandate all involved buried piping, Congress did not intend the mandate to cover aboveground piping. In addition, according to WMPA, if the rule covered aboveground short sections of piping, it would affect most of the 2,950 mobilehome parks in California with master meter systems. WMPA said mobilehomes in these parks are usually connected to gas meters by short flexible pipe that is the responsibility of the mobilehome owner. WMPA recommended that the final rule not apply to aboveground piping less than 6 feet long.

We too were concerned about the impact of the proposed rules on short sections of piping between customer meters and buildings. So, in the NPRM and SNPRM, we asked for public comment on whether these short sections of piping are properly installed and periodically maintained. One operator commented that trained operator or heating contractor personnel install the short sections. Another operator said installation is done according to the National Fuel Gas Code, interior gas piping standards produced by the American National Standards Institute and the National Fire Protection Association. Several operators said that short sections seldom or never leak. A few operators reported they periodically inspect short sections for leaks and advise customers of any problems. However, one operator said it does not check commercial or industrial piping. Two other operators said they check for leaks when they turn gas on or when they receive leak reports. WMPA commented that leak surveys normally include the customer's connector pipe, and that mobilehome owners are advised of any needed repairs.

These comments and the TPSSC recommendation convinced us that aboveground customer piping should not be regarded as covered piping. First of all, we recognize that if aboveground piping were covered, almost every gas customer in the U.S. would have to be notified. And there is no evidence that a notification program of this magnitude would result in a comparable increase in public safety. Nor do we think Congress contemplated a huge, nationwide notification program. Although the mandate arguably applies to any customer piping up to building walls, the fact that the accidents that led to the mandate happened on buried service lines means it is reasonable to conclude that Congress intended the mandate to cover only buried customer piping. This conclusion is congruous with the risks involved, because as the comments indicate, aboveground customer piping poses much less risk than buried customer piping. Therefore, the final rule applies only to buried piping (§192.16(a)). As a result, short sections of customer piping between customer meters and building walls that are entirely aboveground are not covered by the final rule.

E. Farm Taps and Industrial Taps

The proposed rules applied to customers served by "farm taps" or "industrial taps." Farm tap is industry jargon for a pipeline that branches from a transmission or gathering line to deliver gas to a farmer or other landowner. Similarly, an industrial tap is a pipeline that branches from a transmission or gathering line to deliver gas to an industrial plant. So companies primarily engaged in the transmission or gathering of gas operate most farm taps and industrial taps.

About a third of commenters argued against this proposal, saying that Congress intended the mandate to

apply only to local distribution companies. In support, they pointed out that residential accidents prompted the mandate. They also said that customers served by farm and industrial taps are more likely than residential customers to be familiar with the need to maintain gas piping. In this regard, a gas production company said its lease agreements with farm tap customers make them aware of their responsibility for maintenance. TPSSC also recommended that we limit the final rule to distribution operators and to residential and small commercial customers.

We do not believe these arguments and TPSSC recommendations justify excluding farm tap and industrial tap customers from the final rule. To begin with, while we recognize that Congress was primarily concerned about residential customers, the mandate is not so limited. Congress applied the mandate to "operators of natural gas distribution pipelines." But these operators are not just local distribution companies as the commenters suggested. Some operators primarily engaged in the gathering or transmission of gas also operate distribution pipelines. They do so when they deliver gas directly to customers through farm taps and industrial taps. In fact, because portions of these delivery lines qualify as service lines, gathering and transmission operators report them as distribution pipelines under 49 CFR 191.13. Moreover, farm and industrial tap customers are not immune from harm by potential hazards that could occur on their piping. And surely not all farm and industrial tap customers know enough about gas piping safety to make even a single maintenance notice unnecessary.

Therefore, application of the final rule does not depend on the nature of an operator's primary business. To clarify this point, we reworded the final rule (§192.16(a)) so that it applies to operators of service lines, instead of transmission or distribution operators as proposed. Although this change made it unnecessary to define "farm tap" or "industrial tap," operators of these taps are not excepted from the final rule.

We recognize that local distribution companies operate some metered farm taps on transmission lines. In these cases, the local distribution company is responsible for compliance with the final rule.

F. Meaning of "Maintain"

The mandate applies to operators who do not "maintain" customer piping up to building walls. What Congress meant by "maintain" is important, because operators who maintain customer piping up to building walls need not advise customers of the need for maintenance. Because "maintain" is inexact, the NPRM and SNPRM proposed to clarify the mandate by giving "maintain" a particular meaning: "maintain...to Part 192 standards" (proposed §192.16(a)).

Commenters thought the standards in Part 192 were not an appropriate gauge of whether an operator maintains covered piping as Congress had in mind. One operator put it this way: while it may be reasonable to conduct a leakage survey every 3 years (under §192.723) up to the nearest building wall and, if a leak is detected, shut off the flow of gas, it would not be reasonable to maintain a customer's piping to meet all Part 192 maintenance standards. Another operator thought the proposal was unreasonable because it would require operators to send notices to customers even if operators maintain covered piping according to State requirements, but not to Part 192.

RSPA agrees that operators would have difficulty meeting Part 192 maintenance standards on covered piping. Operators may lack permission from property owners to take maintenance action or lack the necessary information upon which to base maintenance action. For example, under §192.725, each disconnected service line must be pressure tested as a new line. Yet operators probably would need

access to the customer's building and other permission from the customer or property owner to do this test on a customer's piping. Another example is §192.455(a), which provides that each buried pipeline installed after July 31, 1971, must be protected against external corrosion. This regulation presumes operators know the installation date of their pipelines, a fact they may not know for a customer's piping.

Upon further consideration, we are defining "maintain" to mean whatever maintenance is reasonable for operators to do on covered piping, considering the Congressional intent. Although the legislative history casts little light on what Congress meant by "maintain," it does show that Congress was concerned about corrosion-related accidents on service lines.

Preventing and correcting hazardous leaks are the major safety reasons to maintain gas pipelines. The comments show that many operators already check customer piping between customer meters and building walls for leaks. Some operators may check for leaks while doing routine leakage surveys on their own pipelines under §192.723. If a leak is found, depending on the nature of the leak, they either shut off the flow of gas or warn the customer to repair the leak.

Besides leakage checks, another reasonable maintenance activity is to monitor customer piping for corrosion, a major cause of leaks on metallic pipelines. More specifically, operators must periodically monitor their buried metallic service lines for external corrosion under §192.465. With permission from the land owner or tenant, operators could also monitor covered piping according to this standard. However, rather than take the specified remedial action, which might be difficult to do on covered piping, they could shut off the flow of gas or warn the customer to repair any harmful corrosion found.

Considering the reasons for maintenance, Congress's concern about corrosion, present industry practices, and commenters' advice, we believe "maintain" means periodic checking for leaks and corrosion, with appropriate follow-up action. Thus, the final rule (§192.16(a)) provides that operators who do not maintain covered piping according to §192.465 (if applicable) and §192.723, with appropriate remedial action, must send the customer a maintenance notice.

In accordance with Executive Order 12898 on Environmental Justice, we have considered the potential effect of this final rule on minority and low income customers. Because the rule applies only to gas operators who do not inspect certain customer piping, the rule will not impose direct costs on gas customers. However, some customers may incur indirect costs of the rule. Customers who own exterior gas piping and decide to heed the gas company's maintenance advice could face large repair bills, depending on the condition and amount of their piping. Indirect costs can also arise when operators who inspect customer-owned piping discover that it is leaking or otherwise unsafe and require customers to repair the piping if gas service is to continue.

We cannot predict which customers would be likely to incur these indirect costs. However, the proportion of minority and low income customers that might incur them should be small, because most minority and low income gas customers are tenants. As tenants, they can reasonably be expected to refer the matter of piping maintenance or unsafe piping to their landlords, who are responsible for corrective action.

When minority and low income customers must bear the indirect costs themselves, voluntary organizations and local welfare agencies can reasonably be expected to provide assistance, especially in response to gas shut off situations if the health of customers is affected. In addition, we expect that

states adopting this final rule will monitor its effect on minority and low income gas customers and find additional ways to lessen the indirect cost burden. For example, states may require operators to stand the cost of maintenance or establish a fund to pay for maintenance that minority and low-income customers cannot afford.

Despite the potentially low impact of this final rule on minority and low income customers as a whole and efforts to defray indirect costs, the cost of piping maintenance will unavoidably be a hardship for some minority and low income customers. Still, in view of the high safety risk of deteriorating residential gas piping and Congress's mandate that operators warn customers about this potential problem, we see no federal regulatory alternative that would lessen the potential cost burden. We will, however, examine this issue further in the report to Congress on the safety of customer-owned service lines that is required by section 115(b) of the Pipeline Safety Act of 1992 (Public Law 102508, 106 Stat. 3296).

G. Customer Responsibility

The NPRM and SNPRM proposed that operators who do not maintain covered piping must notify the customer that "the customer owns and is responsible for the maintenance of the customer-owned service line" (proposed §192.16(a)(1)). The purpose of this proposal was to alert customers that the operator does not maintain the customer's piping.

AGA and several operators pointed out that customers who occupy rental properties, especially commercial buildings, may not own the piping through which they receive gas. Other commenters observed that operators may not know who owns the customer's piping. One solution a commenter suggested was that the notice advise rental customers to refer the maintenance advice to the landlord.

Another consideration, not raised by commenters, is that many states now require operators to do some maintenance on customer piping. In these states, it would be incorrect for operators to notify customers that the customers or their landlords are responsible for maintenance of customer piping.

Thus, it appears the proposal could be confusing or incorrect in some circumstances if included in maintenance notices. To avoid this confusion, the final rule (§192.16(b)(1)) merely requires operators to notify customers that the operator does not maintain the customer's piping.

Some operators may do a level of maintenance on customer piping (either voluntarily or under State law) that does not reach the minimum level prescribed by the final rule. If these operators wish to avoid advising customers that they do not maintain customer piping, they would have to increase their maintenance to the minimum level.

H. Requirements for Maintenance

Under the mandate, operators who do not maintain covered piping must advise their customers of the requirements for maintenance of that piping. To carry out this feature of the mandate, the NPRM and SNPRM proposed that operators notify customers "of the essential elements for proper maintenance...such as those listed in subpart M of [Part 192] or those listed in applicable local building codes" (proposed §192.16(a)(2)).

Many commenters, including Iowa, Michigan, AGA, and TGA, recommended that the final rule not

refer to Part 192 or local codes as examples of the essential elements of maintenance. The objection expressed most often was that Subpart M of Part 192 is not appropriate for customer piping downstream from meters; it was written for operators, not customers. Commenters also said the proposed rule was indefinite about which sections in Subpart M to apply to customer piping. Several commenters said that Subpart M and the local codes may conflict with each other, forcing operators to choose which standard is appropriate for customers to follow. One commenter stated it would be unreasonable to require operators to learn the essential elements of local building codes applicable to maintenance of customer piping and then send that information to each customer. For example, one large distribution company said it would be especially burdensome to examine the details of local codes in the 535 cities, towns, and communities it serves, and to continually keep abreast of them.

Alternatively, INGAA and an operator suggested that the final rule specify the maintenance advice operators are to give customers, instead of leaving it to the operator's discretion. INGAA said this approach would minimize the potential liability for giving inappropriate advice. The operator said it would reduce the confusion of different operators giving different advice to similar customers. Two operators thought we should limit the maintenance advice to periodic leakage surveys. Also, two other operators advised us to mention corrosion control as an example of essential maintenance.

We believe Congress used the word "requirements" in the sense of actions that are necessary for maintenance, rather than required by law for maintenance. So we proposed that operators use local codes, Subpart M of Part 192, or other sources as a guide to identify essential elements of maintenance. Although many commenters interpreted the proposal to the contrary, we did not intend for operators to keep abreast of local code requirements applicable to maintenance of customer piping. Nor did we intend for notifications to bring customers up to date about their obligations under local law.

We recognize, though, that the proposed rules gave operators wide latitude to decide what maintenance advice to provide customers. We also recognize that confusion could result if operators gave different advice in similar situations. So we adopted the suggestion to specify essential maintenance advice. We based the specified maintenance advice on the recommendations of commenters and the decision discussed above on the meaning of "maintain." Since the specified maintenance advice is commonly found in pipeline safety programs, we doubt it conflicts with local codes. Consequently, the final rule (§192.16(b)(3)(i)-(iii)) does not require notice of any provisions of Subpart M of Part 192 or of any local code requirements. It simply requires operators to notify customers that their buried gas piping should be periodically inspected for leaks; periodically inspected for corrosion, if the piping is metallic; and repaired if any unsafe condition is found. By referring to buried piping, the notice will encourage customers to apply the advice to any buried piping they may have besides their primary supply line.

1. Maintenance Assistance

The mandate requires that operators advise customers of any resources known to the operator that could assist customers in carrying out maintenance. In response, we proposed that operators notify customers "of available resources that could aid the customer in obtaining maintenance assistance, such as the gas pipeline operator, the state licensing board for plumbers and state plumbers' associations, Federal and state gas pipeline safety organizations, the local building code agencies, and appropriate leak detection, gas utility, and corrosion protection contractors" (proposed §192.16(a)(3)).

Many commenters said it would be too burdensome to maintain current lists of agencies, associations,

and contractors over wide areas. They said customers could easily find maintenance assistance by consulting the local better business bureau or chamber of commerce. A few commenters were concerned the proposed rule would cause suits to be filed against the operator for unfair competition if notices omitted appropriate contractors, or for negligence if recommended contractors caused injuries or did unsatisfactory work. One commenter thought the proposed rule was unfair because it would force operators to refer customers to businesses that compete with the operators to provide maintenance services on gas piping.

In view of these comments, we decided to require operators to give only general advice about maintenance assistance. Operators need not maintain lists of specific contractors that might do maintenance work on customer piping. Although government agencies probably could advise customers about State or local laws, this advice probably would not be helpful in carrying out maintenance. Instead of advising inquirers about the details of maintenance, agencies and associations probably would refer them to contractors. Since customers can learn the names of contractors through the yellow pages or local chambers of commerce, the final rule does not require notice of specific contractors, agencies, or associations. The rule (§192.16(b)(5)) simply requires notice that the operator (if applicable), plumbers, and heating contractors may be contacted for assistance in maintaining and locating the customer's piping. Under this rule, if an operator does not offer such assistance, it would not have to mention itself as a possible source of assistance. At the same time, an operator may not mention only itself as a source of assistance on customer piping.

J. Other Helpful Information

1. General

The mandate requires that operators provide information the operator has on operating and maintaining its lines that could assist customers. In turn, we proposed that operators notify customers of "any information that the operator has concerning the operation and maintenance of the customer-owned service line that could aid the customer, such as information on excavation damage prevention, local codes and standards (when applicable), and the age, location, and material of the customer-owned service line" (proposed §192.16(a)(4)).

2. Age, Location, and Material

TPSSC and about a third of commenters urged us not to require operators to provide information about the age, location, and material of customer piping. Several commenters said that because the information was site specific, operators could not use a notice generally applicable to all customers, as contemplated in the NPRM. Others said operators typically do not have the proposed information about customer piping, and it would be an undue burden to get it. A number of commenters also pointed out that the age of customer piping may not correspond to the date the operator established gas service, because the customer may have replaced or altered the piping since that date.

We agree that operators may not have the proposed information about customer piping, since they are not required by Part 192 to maintain the piping. Also, obtaining the information would be a significant burden that Congress did not intend operators to assume. The mandate requires operators to give customers helpful information based on the operation and maintenance of the operator's pipelines. The mandate does not require operators to gather information about customer piping. Even when operators do have some information about customer piping, requiring them to add the information to notices

might not allow the operators to use a general notice to meet the notification rule. Therefore, this final rule does not require operators to notify customers of the age, location, and material of customer piping.

As a result, operators may send each customer a notice on the proper maintenance of customer piping in general. Notices need not be tailored to meet specific customer situations. However, operators who have specific information about customer piping and wish to include it in notices are encouraged to do so.

3. Local Laws

For reasons discussed above concerning proposed §192.16(a)(2), several commenters suggested that the final rule not make operators responsible for advising customers about local laws. Since local building codes would be burdensome for operators to track, are the responsibility of local agencies to enforce, and are unlikely to contain instructions on how to carry out piping maintenance, the final rule does not require notice of local laws.

4. Excavation Damage Prevention

Two operators asked us to clarify the information they would have to provide about excavation damage. They suggested the notice stress the need to locate piping before excavating and to dig with care.

We agree that this information would be helpful to customers, because of the large number of gas pipeline accidents attributable to excavation damage. The final rule (§192.16(b)(4)) reflects these comments. However, operators are not required to notify customers to contact "one-call" systems to learn the location of buried customer piping before excavating. One-call systems provide such service only for piping of companies that are members of the system. One-call systems generally have no information regarding customer piping.

Apart from the maintenance requirements discussed above, information about preventing excavation damage is probably the most significant information operators have about operating and maintaining their own pipelines that would be helpful to customers. In the interest of producing a general notice limited to basic advice, the final rule does not require notice of any other information related to operation and maintenance of the operator's pipelines. However, operators may supplement the required information as they deem appropriate.

K. Potential Hazards

The mandate requires that operators notify customers about the potential hazards of not maintaining customer piping. As proposed in the NPRM and SNPRM, operators would have to advise customers of "the potential hazards of not maintaining the customer-owned service line, such as corrosion and gas leakage" (proposed §192.16(a)(5)).

Only a few commenters addressed this proposal. Two commenters thought it would be unfair if operators had to warn their customers that gas piping can be hazardous, while their competitors, fuel oil and electric companies, do not have to give a similar warning. One commenter said that sending notices about potential hazards would not be compatible with the goal of market expansion. Another commenter requested that in the final rule, we insert "reasonably foreseeable" before "potential hazard."

Although we do not have discretion under the mandate not to require notice of potential hazards, we did not find the arguments against such notice persuasive. The risks involved in using fuel oil and electricity have not demanded the same level of public attention as gas pipeline risks. So, from a public policy standpoint, it is not unfair if only gas pipeline operators must warn their customers of risks. Also, we do not agree that warning customers of potential hazards is incompatible with business expansion. Part 192 already requires operators to post signs over their pipelines warning of potential danger (§192.707), and to educate the public to recognize gas pipeline emergencies (§192.615). These programs and the abundant advertisements about using "one call" systems to guard against the hazards of excavation damage have, to our knowledge, not adversely affected the growth of business. Indeed, we believe people prefer to do business with socially responsible companies that do not hesitate to publicize information that could help prevent accidents. Finally, to qualify "potential hazard" the way one commenter suggested would not enhance the clarity of the final rule.

The proposal concerning notice of potential hazards is adopted in this final rule as §192.16(b)(2) - the second item in the list of information to be provided, rather than the last item, as proposed. This rearrangement encourages operators to warn customers of potential hazards at the beginning of notices instead of at the end. A notice may mention just two potential hazards: corrosion and leaks. Most commenters referred to these potential hazards in response to the proposal, and service line accidents generally involve these hazards.

L. Frequency and Time of Notification

1. General

The mandate does not specify how often operators must give their customers maintenance advice or when they must give them the advice. To clarify these points, we proposed that operators notify existing customers within 6 months after publication of the final rule, and new customers within that time or within 30 days after the service line is placed in service, whichever is later (proposed §192.16(b)).

2. Number of Notices

Several commenters thought the final rule should clearly state whether operators must notify a customer more than once. Other commenters, including NTSB, felt a single notice to each customer would not be sufficient. They recommended that operators send notices annually (to refresh customer memory), every 2 years, every 5 years, or occasionally.

A single notice sent to each present and future customer would satisfy the mandate. None of the advocates for more frequent notification showed that additional notices would significantly improve safety. Furthermore, the cost of periodic notices would be high, and the effect of customer notification on accident prevention is uncertain. There is also an absence of accumulated accident data on customer piping from which to project the benefits of sending multiple notices to the same customers. Consequently, the final rule expressly states that operators must notify each customer only once.

3. New Customers

Three commenters said the proposed rule was unclear whether "new customers" meant new customers on new service lines or new customers on existing service lines. A few operators said it would be a

tremendous burden to notify every new customer on an existing service line because of the large changeover in customers. One operator said it has over 100,000 of such new customers annually. These operators would prefer to notify only the first customer on a new service line or to send notices to all customers periodically.

For the mandate to have a continuing effect on customer safety, each present and future customer must receive a maintenance notice if the operator does not maintain covered piping. There would be no continuing effect if operators were to notify just existing customers and the first customers on new service lines. As these customers leave, their successors might lack necessary maintenance information, and the safety of customer piping might decline. So the final rule applies to all new customers. Operators can mitigate the burden of notifying large numbers of customers by inserting general notices in billing envelopes.

To avoid confusion, the final rule does not distinguish new customers from existing customers. Instead, the rule (§192.16(c)) requires operators to notify each customer by a certain date, as discussed next.

4. Time of Notification

AGA and several operators recommended a compliance time of 1 year to notify existing customers, instead of 6 months as proposed. They argued that operators would need more time to learn which customers to notify, to draft and send notices, and to instruct personnel to handle inquiries. These commenters also said more time would ease the burden on staff by allowing operators to spread notifications over a longer period.

For new customers, one operator advised that sending notices within 30 days after the customer's service begins would not fit the company's billing cycle. AGA and INGAA suggested an appropriate time to notify new customers would be the time of first billing, rather than when a service line is placed in service.

We proposed a 6-month compliance period to notify existing customers based primarily on our estimate of the time needed to prepare and send out notices. However, in view of the additional information commenters provided, 1 year now seems more appropriate. Further, because service lines are often left in service during customer changeover, the suggestion to notify new customers upon first billing seems reasonable. However, some operators may not choose billing as the method of notification. And, as one commenter remarked, many farm tap customers who receive gas under a right-of-way agreement are not billed. Considering the variations among billing cycles and the alternative means of distributing notices, we believe 90 days after first receipt of gas at a particular location would be a reasonable deadline by which to notify new customers. Therefore, the final rule requires operators to notify each customer not later than 1 year from today or 90 days after the customer first receives gas at a particular location, whichever is later (§192.16(c)).

M. Records

The mandate does not require that operators keep records of the advice they give customers. However, as a way to check compliance, we proposed that "each operator must keep a record of the written notifications" (proposed §192.16(c)).

AGA and several operators said the type of record and the retention time were unclear under the

proposed rule. Maryland suggested that to see if operators have notified customers, inspectors would have to inspect a record of the date a notice was sent, the name of the customer, and a copy of the notice. In contrast, several operators thought keeping a list of notified customers and the dates they were notified would be too burdensome. Three operators suggested the final rule just require maintenance of a copy of the notice being sent to customers.

To check compliance, RSPA and State inspectors will need to view a copy of the notice operators send customers and evidence that notices have been sent to customers. This evidence may relate to the overall notification process, and need not be customer-specific. For example, a record showing the approximate dates notices are mailed or a written procedure for the notification process would be evidence notices have been sent. More in depth checks on compliance could be conducted where warranted without requiring more detailed records. Therefore, we clarified the final rule to provide that operators must maintain a copy of the notice currently in use and evidence that the notices have been sent to customers as required (§192.16(d)). Evidence of notifications more than 3 years old may be discarded.

N. Master Meter Operators

One commenter recommended that we specifically exempt operators of master meter systems from the final rule. Operators of master meter systems purchase gas from pipeline companies through master meters, and then resell and distribute the gas to customers. The customers are usually residents of mobilehome parks or housing projects, the operator's primary enterprise.

In developing the NPRM, we assumed the proposed rules would not affect many master meter operators because they generally own all gas distribution piping up to each customer's dwelling. However, as stated above, WMPA advised that the proposed rules would affect mobilehome parks in California because of customer-owned short sections of connector piping. Although that piping was aboveground and would not come under the final rule, it is reasonable to assume that buried connector piping may occur in some master meter systems. So the proposed rule may have affected small entities to a larger extent than we first pictured.

To mitigate this impact, the final rule (§192.16(c)) allows master meter operators to continuously post a general notice as an alternative to sending notices to customers individually. This type of notification is appropriate for master meter systems because there is commonly a prominent place visited by residents, such as a management office, that is suitable for such posting.

Although the final rule probably does not affect many master meter operators, we did not adopt the suggestion to specifically exempt these operators. As operators of distribution pipelines, they come under the mandate when they do not maintain buried customer piping up to building walls. Also, there is no evidence to suggest that customers of master meter operators have less need for safety information than customers of other operators.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Policies and Procedures

The Office of Management and Budget (OMB) does not consider this final rule to be a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, OMB did not review the final

rule. Also, DOT does not consider the final rule to be significant under its regulatory policies and procedures (44 FR 11034, February 26, 1979). A final regulatory evaluation is available for review in the docket.

B. Executive Order 12612

We analyzed the final rule under the principles and criteria in Executive Order 12612 ("Federalism"). The final rule does not have sufficient federalism impacts to warrant preparation of a federalism assessment.

C. Regulatory Flexibility Act

I certify, under Section 605 of the Regulatory Flexibility Act, that this final rule will not have a significant economic impact on a substantial number of small entities. For purposes of that act, small entities supply gas to fewer than 10,000 customers, and most small entities are operators of master meter systems. As discussed above, most master meter operators do not come under the final rule because they own all gas piping up to building walls. Master meter operators that do come under the rule may comply merely by posting a notice in a prominent location. So compliance cost will be nominal for the bulk of small entities. The remaining small entities, mostly operators of distribution systems in small towns, will be subject to the same rule as other operators. But, as explained above, operators can either avoid notification costs by maintaining covered piping, or mitigate costs by including general notices in billing envelopes.

D. Paperwork Reduction Act

OMB has approved the information collection requirements of this final rule under 44 U.S.C. Chapter 35.

List of Subjects in 49 CFR Part 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

RSPA amends 49 CFR part 192 as follows:

Part 192 [Amended]

1. The authority citation for part 192 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; 49 CFR 1.53.

2. Section 192.16 is added to read as follows:

§192.16 Customer notification.

(a) This section applies to each operator of a service line who does not maintain the customer's buried piping up to entry of the first building downstream, or, if the customer's buried piping does not enter a building, up to the principal gas utilization equipment or the first fence (or wall) that surrounds that equipment. For the purpose of this section, "maintain" means monitor for corrosion according to §192.465 if the customer's buried piping is metallic, survey for leaks according to §192.723, and if an unsafe condition is found, either shut off the flow of gas or advise the customer of the need to repair the unsafe condition.

(b) Each operator shall notify each customer once in writing of the following information:

(1) The operator does not maintain the customer's buried piping.

(2) If the customer's buried piping is not maintained, it may be subject to the potential hazards of corrosion and leakage.

(3) Buried gas piping should be -

(i) Periodically inspected for leaks;

(ii) Periodically inspected for corrosion if the piping is metallic; and

(iii) Repaired if any unsafe condition is discovered.

(4) When excavating near buried gas piping, the piping should be located in advance, and the excavation done by hand.

(5) The operator (if applicable), plumbers, and heating contractors can assist in locating, inspecting, and repairing the customer's buried piping.

(c) Each operator shall notify each customer not later than August 14, 1996 or 90 days after the customer first receives gas at a particular location, whichever is later. However, operators of master meter systems may continuously post a general notice in a prominent location frequented by customers.

(d) Each operator must make the following records available for inspection by the Administrator or a State agency participating under 49 U.S.C. 60105 or 60106:

(1) A copy of the notice currently in use; and

(2) Evidence that notices have been sent to customers within the previous 3 years.

Issued in Washington, D.C. on _____

Ana Sol Gutiérrez
Deputy Administrator

Docket PS-135; Amdt. 192-74A

DEPARTMENT OF TRANSPORTATION

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

49 CFR Part 192

[Docket PS-135; Amdt. 192-74A]

RIN 2137-AC32

Customer-Owned Service Lines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: This action concerns a petition to reconsider the rule that requires operators of gas service lines who do not maintain certain buried customer piping to notify customers of the need for maintenance. The request to change the rule to clarify the exclusion of customer branch lines is granted because some operators are apparently misconstruing the rule to cover these lines. The request to change the rule to specify operator repair as a maintenance option is granted because a literal reading of the rule's definition of maintenance excludes this legitimate option.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow, (202) 366-2392.

SUPPLEMENTARY INFORMATION: As directed by the 102d Congress (49 U.S.C. §60113(a)), RSPA issued a rule (49 C.F.R. 192.16) that requires certain operators of gas service lines to notify their customers of the need to maintain buried customer piping (60 FR 41828; August 14, 1995). Operators subject to this rule are identified in the first paragraph of the rule, as follows:

§192.16 Customer notification.

(a) This section applies to each operator of a service line who does not maintain the customer's buried piping up to entry of the first building downstream, or, if the customer's buried piping does not enter a building, up to the principal gas utilization equipment or the first fence (or wall) that surrounds that equipment. For the purpose of this section, "maintain" means monitor for corrosion according to §192.465 if the customer's buried piping is metallic, survey for leaks according to §192.723, and if an unsafe condition is found, either shut off the flow of gas or advise the customer of the need to repair the unsafe condition.

In a petition dated September 8, 1995, the American Gas Association (AGA) asked RSPA to reconsider this notification rule. AGA contends §192.16(a) is deficient in two respects. First, AGA is concerned that §192.16(a) does not indicate that branch lines, serving secondary equipment such as yard lanterns or pool heaters, are not part of the customer's buried piping that operators must maintain to qualify for exclusion from the rule. In fact, as AGA construes the rule, to avoid sending notifications operators

would have to maintain most of these branch lines. For clarity, AGA recommends amending §192.16(a) to refer to "buried gas supply piping" instead of "buried piping."

The amount of customer piping an operator must maintain to avoid sending customer notifications was a significant issue in this rulemaking proceeding. Of particular concern was buried piping that branches from the customer's primary gas supply line to serve secondary equipment, such as a yard lantern or pool heater. We addressed this issue in the final rule document as follows:

[w]e intended the proposed rules to apply to customers' primary gas supply lines. Branch lines that serve pool heaters, yard lanterns, or other types of secondary equipment were not intended to be covered. The final rule (§192.16(a)) clarifies this point by covering customer piping up to gas utilization equipment only when the customer's piping does not enter a building. (60 FR 41822)

Given this history of §192.16(a) and the plain meaning of the rule, we do not agree with AGA that the rule can reasonably be construed to apply to most branch lines serving yard lanterns or pool heaters. As AGA acknowledges in its petition, such lines typically do not enter buildings. Buried customer piping that does not enter a building is covered only if it serves the customer's principal gas utilization equipment. And by their very nature, branch lines do not serve principal gas utilization equipment.

Nevertheless, the existence of the AGA petition indicates that some service line operators may be misconstruing the rule. Since we want to make the rule as easy as possible for everyone to understand, we have amended §192.16(a) to emphatically state that the customer's buried piping does not include branch lines that serve yard lanterns, pool heaters, or other types of secondary equipment. We did not feel AGA's suggestion to modify "piping" with "gas supply" would necessarily clarify the rule because all customer piping provides a supply of gas.

Next, AGA argues that the definition of "maintain" is too restrictive because it does not mention repair as a method of remedying unsafe customer piping. As a result, AGA suggests §192.16(a) could be construed to require operators to send customer notifications even if they repair unsafe conditions on customer piping. AGA recommends amending the definition of "maintain" to include repair as a remedial measure.

We believe AGA's recommendation has merit. Operators may indeed choose to repair some unsafe conditions on customer piping without shutting off the gas or advising the customer of the problem. Such repair would be wholly consistent with the purpose of §192.16 - to promote the safety of customer piping - and would exceed the required minimum level of maintenance. Thus, operator repair should not be the basis for a charge of noncompliance with the rule. To preclude this possibility and clarify the rule, we have amended §192.16(a) as AGA recommends in the second part of its petition.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures. The Office of Management and Budget (OMB) does not consider this final rule to be a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, OMB did not review this final rule. Also, DOT does not consider this final rule to be significant under its regulatory policies and procedures (44 FR 11034, February 26, 1979). Because this final rule merely clarifies an existing rule, the economic impact is too minimal to warrant an evaluation of costs and benefits. However, an evaluation of the costs and benefits of the rule revised by this regulatory action is available for review in the docket.

Executive Order 12612. We analyzed this final rule under the principles and criteria in Executive Order 12612 ("Federalism"). The final rule does not have sufficient federalism impacts to warrant preparation of a federalism assessment.

Regulatory Flexibility Act. I certify, under Section 605 of the Regulatory Flexibility Act, that this final rule will not have a significant economic impact on a substantial number of small entities. As explained in Amendment 192-74 (60 FR 41828; August 14, 1995), most small entities do not come under the rule revised by this regulatory action, and those small entities that do may exercise very low cost means of compliance.

List of Subjects in 49 CFR Part 192

Natural gas. Pipeline safety. Reporting and recordkeeping requirements.

RSPA amends 49 CFR part 192 as follows:

Part 192 [Amended]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; 49 CFR 1.53.

2. Section 192.16(a) is revised to read as follows:

§192.16 Customer notification.

(a) This section applies to each operator of a service line who does not maintain the customer's buried piping up to entry of the first building downstream, or, if the customer's buried piping does not enter a building, up to the principal gas utilization equipment or the first fence (or wall) that surrounds that equipment. For the purpose of this section, "customer's buried piping" does not include branch lines that serve yard lanterns, pool heaters, or other types of secondary equipment. Also, "maintain" means monitor for corrosion according to §192.465 if the customer's buried piping is metallic, survey for leaks according to §192.723, and if an unsafe condition is found, shut off the flow of gas, advise the customer of the need to repair the unsafe condition, or repair the unsafe condition.

* * * * *

Issued in Washington, D.C. on _____
Ana Sol Gutiérrez
Deputy Administrator

[FR Doc. 95-30032 Filed 12-8-95; 8:45 am]

Docket No. PS 145; Amdt. 192-74 (192-75)

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 191, 192, 193, 195, 198, and 199

[Docket No. PS 145; Amdt Nos. 190-6; 191-10; 192-74 (192-75); 193-10; 195-55; 198-2; 199-13]

RIN 2137-AC79

Pipeline Safety Program Procedures; Update and Corrections

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; correcting amendments.

SUMMARY: In response to the President's Regulatory Reinvention Initiative, this rulemaking updates and corrects pipeline safety program procedures by amending nomenclature, addresses, amendment summaries, typographical errors, and penalty amounts. These editorial amendments impose no new procedural requirements.

EFFECTIVE DATE: April 26, 1996.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick at 202-366-5523 or online at herrickl@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

In a memorandum dated March 4, 1995, the President provided direction to the heads of Departments and Agencies on carrying out his regulatory reform initiative for reinventing the government. As part of this initiative, RSPA reviewed existing pipeline safety regulations and identified those that are outdated or in need of reform. RSPA also conducted public outreach meetings to discuss the pipeline safety program. A theme of this process and an issue often raised during the course of the outreach meetings and other recent public contacts is the need to keep existing regulation updated. As a result, RSPA reviewed its pipeline safety program procedures, 49 CFR parts 190-199 and identified numerous instances in which these regulations were not up to date. These discrepancies include titles, addresses, amendment summaries, typographical errors and statutory citations. For example, references to the Natural Gas Pipeline Safety Act and the Hazardous Liquid Pipeline Safety Act have been deleted and replaced with references to Public Law 103-272. Enacted on July 5, 1994, Public Law 103-272 revised, codified, and enacted the provisions of those Acts without substantive change as Chapter 601 of Title 49, United States Code. This amendment makes those corrections. In addition, unnecessary gender specific terms have been changed to gender neutral terms and other minor corrections have been made. Since these amendments do not impose new requirements, notice and public procedure are unnecessary.

Rulemaking Analysis and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. This rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This final rule does not require a Regulatory Impact Analysis, or a regulatory evaluation or an environmental assessment or impact statement under the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism") and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor corrections which will not impose any new requirements on persons subject to the Pipeline Safety Regulations; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

Lists of Subjects

49 CFR Part 190

Administrative practice and procedure, Penalties, Pipeline safety.

49 CFR Part 191

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 193

Fire prevention, Pipeline safety, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 198

Grant programs, Formula, Pipeline safety.

49 CFR Part 199

Alcohol testing, Drug testing, Pipeline safety, Reporting and recordkeeping requirements.

Accordingly, 49 CFR parts 190, 191, 192, 193, 195, 198, and 199 are corrected by making the following amendments:

PART 190--[AMENDED]

1. The authority citation for part 190 is revised to read as follows:

Authority: 49 U.S.C. 5123, 60108, 60112, 60117, 60118, 60120, 60122, and 60123, and 49 CFR 1.53.

2. Section 190.1 is amended by revising paragraph (a) to read as follows

§190.1 Purpose and scope.

(a) This part prescribes procedures used by the Research and Special Programs Administration in carrying out duties regarding pipeline safety under 49 U.S.C. 60101 et seq. (the pipeline safety laws) and 49 U.S.C. 5101 et seq. (the hazardous material transportation laws).

3. Section 190.3 is revised to read as follows:

§190.3 Definitions.

As used in this part:

Hearing means an informal conference or a proceeding for oral presentation. Unless otherwise specifically prescribed in this part, the use of "hearing" is not intended to require a hearing on the record in accordance with section 554 of title 5, U.S.C.

OPS means the Office of Pipeline Safety, which is part of the Research and Special Programs Administration, U.S. Department of Transportation.

Person means any individual, firm, joint venture, partnership, corporation, association, State, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

Presiding Official means the person who conducts any hearing relating to civil penalty assessments, compliance orders or hazardous facility orders.

Regional Director means the head of any one of the Regional Offices of the Office of Pipeline Safety, or a designee appointed by the Regional Director. Regional Offices are located in Washington, DC (Eastern Region); Atlanta, Georgia (Southern Region); Kansas City, Missouri (Central Region);

Houston, Texas (Southwest Region); and Lakewood, Colorado (Western Region). Respondent means a person upon whom the OPS has served a notice of probable violation. RSPA means the Research and Special Programs Administration of the United States Department of Transportation.

State means a State of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

4. Section 190.7 is amended by revising paragraphs (d) and (i), introductory text, to read as follows:

§190.7 Subpoenas; witness fees.

• • • • •
(d) Service of a subpoena upon the person named therein shall be made by delivering a copy of the subpoena to such person and by tendering the fees for one day's attendance and mileage as specified by paragraph (g) of this section. When a subpoena is issued at the instance of any officer or agency of the United States, fees and mileage need not be tendered at the time of service. Delivery of a copy of a subpoena and tender of the fees to a natural person may be made by handing them to the person, leaving them at the person's office with the person in charge thereof, leaving them at the person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, by mailing them by registered or certified mail to the person at the last known address, or by any method whereby a actual notice is given to the person and the fees are made available prior to the return date.

• • • • •
(i) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, apply to the official who issued the subpoena, or if the person is unavailable, to the Administrator, RSPA to quash or modify the subpoena. The application shall contain a brief statement of the reasons relied upon in support of the action sought therein. The Administrator, RSPA, or this issuing official, as the case may be, may:

• • • • •
5. Section 190.9 is amended by revising paragraph (b)(1)(i) to read as follows:

§190.9 Petitions for finding or approval.

• • • • •
(b) • • •
(1) • • •
(i) The State agency certified to participate under 49 U.S.C. 60105.

• • • • •
6. Section 190.201 is amended by revising paragraph (a) to read as follows:

§190.201 Purpose and scope.

(a) This subpart describes the enforcement authority and sanctions exercised by the Associate Administrator, OPS for achieving and maintaining pipeline safety. It also prescribes the procedures governing the exercise of that authority and the imposition of those sanctions.

7. Section 190.203 is amended by revising paragraphs (a), (b)(1), (b)(4), and (d) to read as follows:

§190.203 Inspections.

(a) Officers, employees, or agents authorized by the Associate Administrator, OPS upon presenting appropriate credentials, are authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties are relevant to determining the compliance of such persons with the requirements of 49 U.S.C. 60101 et seq. or regulations, or orders issued thereunder.

(b) * * *

(1) Routine scheduling by the Regional Director of the Region in which the facility is located;

* * *

(4) Report from a State Agency participating in the Federal Program under 49 U.S.C. 60105;

* * *

(d) To the extent necessary to carry out the responsibilities under 49 U.S.C. 60101 et seq., the Administrator, RSPA or the Associate Administrator, OPS may require testing of portions of pipeline facilities that have been involved in, or affected by, an accident. However, before exercising this authority, the Administrator, RSPA or the Associate Administrator, OPS shall make every effort to negotiate a mutually acceptable plan with the owner of those facilities and, where appropriate, the National Transportation Safety Board for performing the testing.

* * *

8. Section 190.205 is revised to read as follows:

§190.205 Warning letters.

Upon determining that a probable violation of 49 U.S.C. 60101 et seq. or any regulation or order issued thereunder has occurred, the Associate Administrator, OPS may issue a Warning Letter notifying the owner or operator of the probable violation and advising the operator to correct it or be subject to enforcement action under §§190.207 through 190.235.

9. Section 190.207 is amended by revising paragraphs (a) and (c) to read as follows:

§190.207 Notice of probable violation.

(a) Except as otherwise provided by this subpart, a Regional Director begins an enforcement proceeding by serving a notice of probable violation on a person charging that person with a probable violation of 49 U.S.C. 60101 et seq. or any regulation or order issued thereunder.

* * *

(c) The Associate Administrator, OPS may amend a notice of probable violation at any time prior to issuance of a final order under §190.213. If an amendment includes any new material allegations of fact or proposes an increased civil penalty amount or new or additional remedial action under §190.217, the respondent shall have the opportunity to respond under §190.209.

10. Section 190.209 is amended by revising the introductory text and paragraphs (c) and (d) to read as follows:

§190.209 Response options.

Within 30 days of receipt of a notice of probable violation the respondent shall respond to the Regional Director who issued the notice in the following way:

(c) An offer in compromise under paragraph (a) of this section is made by submitting a check or money order for the amount offered to the Regional Director who forwards the offer to the Associate Administrator, OPS for action. If the offer in compromise is accepted by the Associate Administrator, OPS the respondent is notified in writing that the acceptance is in full settlement of the civil penalty action. If an offer in compromise submitted under paragraph (a) of this section is rejected by the Associate Administrator, OPS it is returned to the respondent with written notification. Within 10 days of receipt of such notification, the respondent shall again respond to the Regional Director in one or more of the ways provided in paragraph (a) of this section.

(d) Failure of the respondent to respond in accordance with paragraph (a) of this section or, when applicable, paragraph (c) of this section, constitutes a waiver of the right to contest the allegations in the notice of probable violation and authorizes the Associate Administrator, OPS, without further notice to the respondent, to find facts to be as alleged in the notice of probable violation and to issue a final order under §190.213.

11. Section 190.211 is amended by revising paragraphs (a), (b), (d), and (j) to read as follows:

§190.211 Hearing.

(a) A request for a hearing provided for in this part must be accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations in the notice, the proposed corrective action (including a proposed amendment, a proposed compliance order, or a proposed hazardous facility order), or the proposed civil penalty amount. A respondent's failure to specify an issue may result in waiver of the respondent's right to raise that issue at the hearing. The respondent's request must also indicate whether or not the respondent will be represented by counsel at the hearing. (b) In such circumstances as deemed appropriate by the Regional Director, and only if the respondent concurs, a telephone conference may be held in lieu of a hearing.

(d) The hearing is conducted informally without strict adherence to rules of evidence. The respondent may submit any relevant information and material and call witnesses on the respondent's behalf. The respondent may also examine the evidence and witnesses presented by the government. A detailed record of a hearing is prepared.

(j) After submission of all materials during and after the hearing, the presiding official shall prepare a written recommendation as to final action in the case. This recommendation, along with any material submitted during and after the hearing, shall be included in the case file which is forwarded to the Associate Administrator, OPS for final administrative action.

12. Section 190.213 is amended by revising paragraph (a), (b)(4), (c), introductory text, and (e) to read as follows:

§190.213 Final order.

(a) After a hearing under §190.211 or, if no hearing has been held, after expiration of the 30 day response period prescribed in §190.209, the case file of an enforcement proceeding commenced under

§190.207 is forwarded to the Associate Administrator, OPS for issuance of a final order. (b) * * *

(4) The Regional Director's evaluation of response material submitted by the respondent and recommendation for final action to be taken under this section; and

• • • • •

(c) Based on a review of a case file described in paragraph (b) of this section, the Associate Administrator, OPS shall issue a final order that includes--

• • • • •

(e) It is the policy of the Associate Administrator, OPS to issue a final order under this section within 45 days of receipt of the case file, unless it is found impracticable to take action within that time. In cases where it is so found and the delay beyond that period is expected to be substantial, notice of that fact and the date by which it is expected that action will be taken is issued to the respondent.

13. Sections 190.215 is revised to read as follows:

§190.215 Petitions for reconsideration.

(a) A respondent may petition the Associate Administrator, OPS for reconsideration of a final order issued under §190.213. It is requested, but not required, that three copies be submitted. The petition must be received no later than 20 days after service of the final order upon the respondent. Petitions received after that time will not be considered. The petition must contain a brief statement of the complaint and an explanation as to why the effectiveness of the final order should be stayed.

(b) If the respondent requests the consideration of additional facts or arguments, the respondent must submit the reasons they were not presented prior to issuance of the final order.

(c) The Associate Administrator, OPS does not consider repetitious information, arguments, or petitions. (d) Unless the Associate Administrator, OPS otherwise provides, the filing of a petition under this section does not stay the effectiveness of the final order.

(e) The Associate Administrator, OPS may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. In the event the Associate Administrator, OPS reconsiders a final order, a final decision on reconsideration may be issued without further proceedings, or, in the alternative, additional information, data, and comment may be requested by the Associate Administrator, OPS as deemed appropriate.

(f) It is the policy of the Associate Administrator, OPS to issue notice of the action taken on a petition for reconsideration within 20 days after receipt of the petition, unless it is found impracticable to take action within that time. In cases where it is so found and delay beyond that period is expected to be substantial, notice of that fact and the date by which it is expected that action will be taken is issued to the respondent.

14. Section 190.217 is revised to read as follows:

§190.217 Compliance orders generally.

When the Associate Administrator, OPS has reason to believe that a person is engaging in conduct which involves a violation of the 49 U.S.C. 60101 et seq. or any regulation issued thereunder, and if the nature of the violation, and the public interest warrant, the Associate Administrator, OPS may conduct proceedings under §§ 190.207 through 190.213 of this part to determine the nature and extent of the violations and to issue an order directing compliance.

15. Section 190.219 is amended by revising paragraph (a) to read as follows:

§190.219 Consent order.

(a) At any time before the issuance of a compliance order under §190.213 the Associate Administrator, OPS and the respondent may agree to dispose of the case by joint execution of a consent order. Upon such joint execution, the consent order shall be considered a final order under §190.213.

* * * *

16. Section 190.221 is revised to read as follows:

§190.221 Civil penalties generally.

When the Associate Administrator, OPS has reason to believe that a person has committed an act which is a violation of any provision of the 49 U.S.C. 60101 et seq. or any regulation or order issued thereunder, proceedings under §§ 190.207 through 190.213 may be conducted to determine the nature and extent of the violations and to assess and, if appropriate, compromise a civil penalty.

16a. Section 190.223 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§190.223 Maximum penalties.

(a) Any person who is determined to have violated a provision of 49 U.S.C. 60101 et seq. or any regulation or order issued thereunder, is subject to a civil penalty not to exceed \$10,000 for each violation for each day the violation continues except that the maximum civil penalty may not exceed \$500,000 for any related series of violations.

(b) Any person who knowingly violates a regulation or order under this subchapter applicable to offshore gas gathering lines issued under the authority of 49 U.S.C. 5101 et seq is liable for a civil penalty of not more than \$25,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense.

(c) Any person who is determined to have violated any standard or order under under 49 U.S.C. 60103 shall be subject to a civil penalty of not to exceed \$50,000, which penalty shall be in addition to any other penalties to which such person may be subject under paragraph (a) of this section.

* * * *

17. Section 190.225, the introductory text, is revised to read as follows:

§190.225 Assessment considerations.

The Associate Administrator, OPS assesses a civil penalty under this part only after considering:

* * * *

18. Section 190.227 is amended by revising paragraphs (c) and (d) to read as follows:

§190.227 Payment of penalty.

* * * *

(c) Within 20 days after the respondent's receipt of a final order assessing a civil penalty issued

under §190.213, the respondent may offer to compromise the assessed penalty by submitting, in the manner required by paragraph (a) of this section, payment in the amount offered. The Chief Counsel or designee may accept or reject the compromise offer on behalf of the Associate Administrator, OPS. If it is accepted, the respondent is notified in writing that the acceptance is in full settlement of the civil penalty action. If the compromise offer is rejected it will be returned to the respondent with written notification. Within 20 days after the respondent's receipt of such notification, payment of the full amount of the civil penalty assessed in the final order becomes due. The provisions of paragraph (b) of this section regarding district court or Federal magistrate court action for penalty collection apply upon failure of the respondent to pay the assessed penalty within that time period.

(d) If the respondent elects to make an offer in compromise to a civil penalty proposed in a notice of probable violation issued under §190.207, the respondent shall do so in accord with the procedures of §190.209.

19. Section 190.229 is amended by revising paragraphs (a) through (d) to read as follows:

§190.229 Criminal penalties generally.

(a) Any person who willfully and knowingly violates a provision of 49 U.S.C. 60101 et seq. or any regulation or order issued thereunder shall upon conviction be subject for each offense to a fine of not more than \$25,000 and imprisonment for not more than five years, or both.

(b) Any person who willfully violates a regulation or order under this subchapter issued under the authority of 49 U.S.C. 5101 et seq. as applied to offshore gas gathering lines shall upon conviction be subject for each offense to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

(c) Any person who willfully and knowingly injures or destroys, or attempts to injure or destroy, any interstate transmission facility or any interstate pipeline facility (as those terms are defined in 49 U.S.C. 60101 et seq.) shall, upon conviction, be subject for each offense to a fine of not more than \$25,000, imprisonment for a term not to exceed 15 years, or both.

(d) Any person who willfully and knowingly defaces, damages, removes, destroys any pipeline sign, right-of-way marker, or marine buoy required by 49 U.S.C. 60101 et seq. or 49 U.S.C. 5101 et seq., or any regulation or order issued thereunder shall, upon conviction, be subject for each offense to a fine of not more than \$5,000, imprisonment for a term not to exceed 1 year, or both.

20. Section 190.231 is revised to read as follows:

§190.231 Referral for prosecution.

If an employee of the Research and Special Programs Administration becomes aware of any actual or possible activity subject to criminal penalties under §190.229, the employee reports it to the Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. The Chief Counsel refers the report to OPS for investigation. Upon completion of the investigation and if appropriate, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.

21. Section 190.233 is amended by revising paragraphs (a), (b), (c)(2), (c)(4), (d), (e) introductory text, (e)(5), (g) and (h) to read as follows:

§190.233 Hazardous facility orders.

(a) Except as provided by paragraph (b) of this section, if the Associate Administrator, OPS finds, after reasonable notice and opportunity for hearing in accord with paragraph (c) of this section, and §190.211(a), a particular pipeline facility to be hazardous to life or property, the Associate Administrator, OPS shall issue an order pursuant to this section requiring the owner or operator of the facility to take corrective action. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action, as appropriate.

(b) The Associate Administrator, OPS may waive the requirement for notice and hearing under paragraph (a) of this section before issuing an order pursuant to this section when the Associate Administrator, OPS determines that the failure to do so would result in the likelihood of serious harm to life or property. However, the Associate Administrator, OPS shall include in the order an opportunity for hearing as soon as practicable after issuance of the order. The provisions of paragraph (c)(2) of this section apply to an owner or operator's decision to exercise such an opportunity for hearing. The purpose of such a post-order hearing is for the Associate Administrator, OPS to determine whether the order should remain in effect or be rescinded or suspended in accord with paragraph (g) of this section.

(c) * * *

(2) An owner or operator elects to exercise his opportunity for a hearing under this section, by notifying the Associate Administrator, OPS of that election in writing within 10 days of service of the notice provided under paragraph (c)(1) of this section or, under paragraph (b) of this section when applicable. Absence of such written notification waives an owner or operator's opportunity for a hearing and allows the Associate Administrator, OPS to proceed to issue a "hazardous facility order" in accordance with paragraphs (d) through (h) of this section.

(4) Within 48 hours after conclusion of a hearing under this section, the Presiding Official shall submit a recommendation to the Associate Administrator, OPS as to whether or not a "hazardous facility order" is required. Upon receipt of the recommendation, the Associate Administrator, OPS shall proceed in accordance with paragraphs (d) through (i) of this section. If the Associate Administrator, OPS finds the facility to be hazardous to life or property the Associate Administrator, OPS shall issue an order in accordance with this section. If the Associate Administrator, OPS does not find the facility to be hazardous to life or property, the Associate Administrator, OPS shall dismiss the allegations contained in the notice, and promptly notify the owner or operator in writing by service as prescribed in §190.5.

(d) The Associate Administrator, OPS may find a pipeline facility to be hazardous under paragraph (a) of this section:

(1) If under the facts and circumstances the Associate Administrator, OPS determines the particular facility is hazardous to life or property; or

(2) If the pipeline facility or a component thereof has been constructed or operated with any equipment, material, or technique which the Associate Administrator, OPS determines is hazardous to life or property, unless the operator involved demonstrates to the satisfaction of the Associate Administrator, OPS that, under the particular facts and circumstances involved, such equipment, material, or technique is not hazardous to life or property.

(e) In making a determination under paragraph (d) of this section, the Associate Administrator, OPS shall consider, if relevant:

* * *

(5) Such other factors as the Associate Administrator, OPS may consider appropriate.

* * *

(g) The Associate Administrator, OPS shall rescind or suspend a hazardous facility order whenever the Associate Administrator, OPS determines that the facility is no longer hazardous to life or property. When appropriate, however, such a rescission or suspension may be accompanied by a notice

of probable violation issued under §190.207.

(h) At any time after an order issued under this section has become effective, the Associate Administrator, OPS may request the Attorney General to bring an action for appropriate relief in accordance with §190.235.

* * * *

22. Section 190.235 is revised to read as follows:

§190.235 Injunctive action.

Whenever it appears to the Associate Administrator, OPS that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of 49 U.S.C. 60101 et seq. or any regulations issued thereunder, the Administrator, RSPA, or the person to whom the authority has been delegated, may request the Attorney General to bring an action in the appropriate U.S. District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages as provided under 49 U.S.C. 60120 and 49 U.S.C. 5123.

23. Section 190.237 is amended by revising paragraph (a) to read as follows:

§190.237 Amendment of plans or procedures.

(a) A Regional Director begins a proceeding to determine whether an operator's plans or procedures required under parts 192, 193, 195, and 199 of this subchapter are inadequate to assure safe operation of a pipeline facility by issuing a notice of amendment. The notice shall provide an opportunity for a hearing under §190.211 of this part and shall specify the alleged inadequacies and the proposed action for revision of the plans or procedures. The notice shall allow the operator 30 days after receipt of the notice to submit written comments or request a hearing. After considering all material presented in writing or at the hearing, the Associate Administrator, OPS shall determine whether the plans or procedures are inadequate as alleged and order the required amendment if they are inadequate, or withdraw the notice if they are not. In determining the adequacy of an operator's plans or procedures, the Associate Administrator, OPS shall consider:

* * * *

PART 191—[AMENDED]

1. The authority citation for part 191 is revised to read as follows:

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, and 60124; and 49 CFR 1.53.

2. Section 191.3 is amended by removing the definition of Secretary, and adding the definition of Administrator to read as follows:

§191.3 Definitions.

* * * *

Administrator means the Administrator of the Research and Special Programs Administration or any person to whom authority in the matter concerned has been delegated by the Secretary of

Transportation.
• • • • •

3. Section 191.19 is revised to read as follows:

§191.19 Report forms.

Copies of the prescribed report forms are available without charge upon request from the address given in §191.7. Additional copies in this prescribed format may be reproduced and used if in the same size and kind of paper. In addition, the information required by these forms may be submitted by any other means that is acceptable to the Administrator.

4. Section 191.25 is amended by revising paragraph (a) to read as follows:

§191.25 Filing safety-related condition reports.

(a) Each report of a safety-related condition under §191.23(a) must be filed (received by the Associate Administrator, OPS) in writing within five working days (not including Saturday, Sunday, or Federal Holidays) after the day a representative of the operator first determines that the condition exists, but not later than 10 working days after the day a representative of the operator discovers the condition. Separate conditions may be described in a single report if they are closely related. Reports may be transmitted by facsimile at (202) 366-7128.
• • • • •

PART 192--[AMENDED]

1. The authority citation for Part 192 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

2. Section 192.11 is amended by revising paragraph (b)(2) to read as follows:

§192.11 Petroleum gas systems.

• • • • •
(b) * * *
(2) Below ground structures must have forced ventilation that will prevent any accumulation of gas.
• • • • •

3. Section 192.227 is amended by revising paragraph (b) introductory text, to read as follows:

§192.227 Qualification of welders.

• • • • •
(b) A welder may qualify to perform welding on pipe to be operated at a pressure that produces

a hoop stress of less than 20 percent of SMYS by performing an acceptable test weld, for the process to be used, under the test set forth in section I of appendix C to this part. A welder who makes welded service line connections to mains must also perform an acceptable test weld under section II of appendix C to this part as part of the qualifying test. After initial qualification, a welder may not perform welding unless:

• • • • •

4. Section 192.361 is amended by revising paragraph (f)(1) to read as follows:

§192.361 Service lines: Installation

• • • • •

(f) • • •

(1) It must be encased in a gas tight conduit;

• • • • •

5. Section 192.367 is amended by revising paragraph (a) to read as follows:

§192.367 Service lines: General requirements for connections to main piping.

(a) Location. Each service line connection to a main must be located at the top of the main or, if that is not practical, at the side of the main, unless a suitable protective device is installed to minimize the possibility of dust and moisture being carried from the main into the service line.

• • • • •

6. Section 192.511 is amended by revising paragraph (a) to read as follows:

§192.511 Test requirements for service lines.

(a) Each segment of a service line (other than plastic) must be leak tested in accordance with this section before being placed in service. If feasible, the service line connection to the main must be included in the test; if not feasible, it must be given a leakage test at the operating pressure when placed in service.

• • • • •

7. Section 192.603 is amended by revising paragraph (c) to read as follows:

§192.603 General provisions.

• • • • •

(c) The Administrator or the State Agency that has submitted a current certification under the pipeline safety laws, (49 U.S.C. 60101 et seq.) with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

9. Section 192.623, the heading, is revised to read as follows:

§192.623 Maximum and minimum allowable operating pressure; Low-pressure distribution systems.

PART 193--[AMENDED]

1. The authority citation for part 193 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53.

2. Section 193.2001 is amended by revising paragraph (a) to read as follows:

§193.2001 Scope of part.

(a) This part prescribes safety standards for LNG facilities used in the transportation of gas by pipeline that is subject to the pipeline safety laws (49 U.S.C. 60101 et seq.) and Part 192 of this chapter.

3. Section 193.2007 is amended by revising the definition of Administrator and the definition of g to read as follows:

§193.2007 Definitions.

Administrator means the Administrator of the Research and Special Programs Administration or any person to whom authority in the matter concerned has been delegated by the Secretary of Transportation.

g means the standard acceleration of gravity of 9.806 meters per second² (32.17 feet per second²).

4. Section 193.2017 is amended by revising paragraph (a) to read as follows:

§193.2017 Plans and procedures.

(a) Each operator shall maintain at each LNG plant the plans and procedures required for that plant by this part. The plans and procedures must be available upon request for review and inspection by the Administrator or any State Agency that has submitted a current certification or agreement with respect to the plant under the pipeline safety laws (49 U.S.C. 60101 et seq.). In addition, each change to the plans or procedures must be available at the LNG plant for review and inspection within 20 days after the change is made.

5. Section 193.2321 is amended by revising paragraph (a) to read as follows:

§193.2321 Nondestructive tests.

(a) The following percentages of each day's circumferentially welded pipe joints for hazardous fluid piping, selected at random, must be nondestructively tested over the entire circumference to indicate any defects which could adversely affect the integrity of the weld or pipe:

Weld type	Cryogenic piping	Other	Test method
Butt welds more than 2 inches in nominal size.	100	30	Radiographic or ultrasonic.
Butt welds 2 inches or less in nominal size.	100	30	Radiographic, ultrasonic, liquid penetrant or magnetic particle.
Fillet and socket welds	100	30	Liquid penetrant or magnetic particle.

* * *

6. Section 193.2515 is amended by revising paragraph (c) to read as follows:

§193.2515 Investigation of failures.

* * *

(c) If the Administrator or relevant state agency under the pipeline safety laws (49 U.S.C. 60101 et seq.) investigates an incident, the operator involved shall make available all relevant information and provide reasonable assistance in conducting the investigation. Unless necessary to restore or maintain service, or for safety, no component involved in the incident may be moved from its location or otherwise altered until the investigation is complete or the investigating agency otherwise provides. Where components must be moved for operational or safety reasons, they must not be removed from the plant site and must be maintained intact to the extent practicable until the investigation is complete or the investigating agency otherwise provides.

PART 195—[AMENDED]

1. The authority citation for part 195 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Section 195.58 is revised to read as follows:

§195.58 Address for written reports.

Each written report required by this subpart must be made to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of

This subpart implements parts of the pipeline safety laws (49 U.S.C. 60101 et seq.), which direct the Secretary to require each State to adopt a one-call damage prevention program as a condition to receiving a full grant-in-aid for its pipeline safety compliance program.

5. Section 198.35 is revised to read as follows:

§198.35 Grants conditioned on adoption of one-call damage prevention program.

In allocating grants to State agencies under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) and under section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2004), the Secretary considers whether a State has adopted or is seeking to adopt a one-call damage prevention program in accordance with §198.37. If a State has not adopted or is not seeking to adopt such program, the State agency may not receive the full reimbursement to which it would otherwise be entitled. 6. Section 198.37 is amended by revising paragraphs (e) and (h) to read as follows:

§198.37 State one-call damage prevention program.

* * * * *

(e) Except with respect to interstate transmission facilities as defined in the pipeline safety laws (49 U.S.C. 60101 et seq.), operators of underground pipeline facilities must be required to participate in the one-call notification systems that cover the areas of the State in which those pipeline facilities are located.

* * * * *

(h) Operators of underground pipeline facilities (other than operators of interstate transmission facilities as defined in the pipeline safety laws (49 U.S.C. 60101 et seq.), and interstate pipelines as defined in §195.2 of this chapter), excavators and persons who operate one-call notification systems who violate the applicable requirements of this subpart must be subject to civil penalties and injunctive relief that are substantially the same as are provided under the pipeline safety laws (49 U.S.C. 60101 et seq.).

PART 199--[AMENDED]

1. The authority citation for part 199 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Section 199.3 is amended by revising the definition for Administrator and the definition for State agency to read as follows:

§199.3 Definitions.

* * * * *

Administrator means the Administrator of the Research and Special Programs Administration or any person to whom authority in the matter concerned has been delegated by the Secretary of Transportation.

* * * * *

State agency means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 et seq.)

3. Section 199.7 is amended by revising paragraph (b) to read as follows:

§199.7 Anti-drug plan.

• • • • •

(b) The Administrator or the State Agency that has submitted a current certification under the pipeline safety laws (49 U.S.C. 60101 et seq.) with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

§199.205 [Amended]

4. Section 199.205 is amended by revising the definition for State agency to read as follows:

• • • • •

State agency means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 et seq.).

• • • • •

Issued in Washington, DC, on March 28, 1996

Rose A. McMurray, Acting Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 96-10282 Filed 4-25-96; 8:45 am]

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Docket No. PS-143; Amdt. 192-76

DEPARTMENT OF TRANSPORTATION

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

49 CFR Parts 192, 193, and 195

(Amdts. 192-76, 193-11, 195-56)

[Docket No. PS-143] [RIN 2137-AC74]

Periodic Updates to the Pipeline Safety Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final Rule.

SUMMARY: This final rule updates the references to voluntary specifications and standards to reflect more recently published editions of each document. This final rule enables pipeline operators to utilize current technology, materials, and practices, thereby reducing costs and enhancing economic growth. In addition, this final rule eliminates the requirements for odorization of hydrogen in transmission lines in instances where the hydrogen is intended for use as a feedstock in a manufacturing process. This eliminates a requirement that is costly, but not needed for safety. This final rule is consistent with the President's goals of regulatory reinvention and improvement of customer service.

EFFECTIVE DATE: June 24, 1996

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366-0918, regarding the subject matter of this Notice; or the Dockets Unit, (202) 366-4453, for copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

In a March 1995 memorandum, President Clinton directed Federal regulatory agencies to, among other things, conduct a page-by-page review of all agency regulations, cutting or revising those that were obsolete, intrusive, or better handled by parties other than the Federal government (i.e., private business, State, or local government).

In response to the President's directive, RSPA issued a Notice of Proposed Rulemaking (NPRM) in this docket on March 4, 1996 (61 FR 8213). The NPRM proposed updating the references to voluntary specifications and standards and proposed elimination of the requirement to odorize hydrogen transmission pipelines.

Eight parties submitted written comments on the NPRM. Commenters consisted of seven pipeline operators, two of which are hydrogen pipeline operators, and a standard setting organization. Comments were generally supportive of RSPA's efforts, although some commenters made additional suggestions.

Incorporation by Reference

RSPA is adopting the proposal to incorporate by reference all or portions of over 40 different documents containing practices, codes, standards, and specifications developed and published by technical organizations, including the American Petroleum Institute, American Gas Association, American Society of Mechanical Engineers, American Society of Civil Engineers, American Concrete Institute, American Society for Testing and Materials, International Conference of Building Officials, Manufacturers Standardization Society of the Valve and Fittings Industry, and National Fire Protection Association. Many editions previously referenced in 49 CFR Parts 192, 193, and 195 are out of print or obsolete. Later published editions of these documents focus on up-to-date technology. Pipeline operators could be unnecessarily burdened with design and construction requirements that are referred to in earlier editions.

To avoid these burdens and allow operators to benefit from technological improvements in materials and methods, this final rule updates those references for which the latest editions have been reviewed and accepted by OPS.

All six commenters on the proposed updates of the voluntary consensus standards were supportive of the initiative. However, one commenter suggested that the regulatory language in Section 192.63 should not make reference to the year of the latest edition of the standard in order to maintain consistency throughout the regulations. RSPA sees merit in this comment, and therefore has revised the final rule to cite the standard without reference to the year of the latest edition.

One commenter suggested that RSPA eliminate the use of specific editions and dates for the referenced standards and refer instead to "the latest edition" of each standard. This commenter believed that in some cases operators are burdened with unnecessary delays and additional costs to obtain pipe or components manufactured to an out-of-date standard.

RSPA will not adopt this proposal to revise the pipeline safety regulations to permanently reference "the latest edition" of the incorporated consensus standards. Before adopting any updated consensus standard RSPA first reviews the standard to determine whether it should be incorporated by reference into the regulations. RSPA then proposes to accept the document(s) through a **Federal Register Notice**, providing the public with an opportunity to comment on the proposal. It would be inconsistent with the Administrative Procedure Act for RSPA to announce that the latest editions of these documents will be accepted without RSPA review or opportunity for public comment.

Three commenters suggested that RSPA review the standards at least annually. RSPA understands the benefits to operators of periodically updating the referenced standards. RSPA will try to revise them annually, as this will lessen burdens on pipeline operators.

Requirement to Odorize Hydrogen Transmission Pipelines

In support of the President's goal to eliminate obsolete and unnecessary regulations, this final rule adopts the proposal to amend 49 CFR 192.625 to eliminate the odorization requirement for hydrogen transmission lines in cases where its intended use is as a feedstock in a manufacturing process. Hydrogen pipelines that were operating without an odorant before May 5, 1975, were already exempt from the odorization requirement.

When used as an industrial feedstock, the hazard from hydrogen pipeline leaks is minimal. Hydrogen is much less dense than air and thus tends to dissipate rapidly. In addition, hydrogen has relatively low energy content for a given volume compared to natural gas. The ignition energy of hydrogen is so low that even static electricity can ignite the gas, making a build-up of gas to dangerous levels unlikely.

Moreover, the costs of deodorization are substantial. Odorization renders hydrogen unfit for

most of its industrial uses, as it can reduce the reactivity of catalysts, make the end product unfit for the purpose for which it is intended, or reduce the percentage completion of a chemical reaction. This means that the odorant needs to be removed, an expensive process, prior to its use in manufacture.

Three commenters discussed RSPA's proposal to eliminate the requirements for odorization of hydrogen transmission pipelines. All comments were in full support of this initiative, and one commenter noted that the revised language in Section 192.625 is consistent with the President's goals of RRI, as it "will serve to effectively eliminate a regulatory requirement that is both unnecessary and economically burdensome on industry."

Advisory Committees

The Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) have been established by statute to evaluate proposed pipeline safety regulations. The committees are required to report on the technical feasibility, reasonableness, and practicability of the proposals.

The NPRM was sent by mail to the committees for consideration. The proposal was unanimously accepted by 11 members of the THLPSSC. The comments of the TPSSC supported the proposal and generally were consistent with written comments filed by other commenters discussed above. Written comments of the TPSSC were similar, but a few members requested further information regarding the hydrogen transmission pipelines that would no longer be subject to the odorization requirement. A TPSSC member asked where these lines are located, and whether they would be tested or surveyed more extensively than other pipelines that are required to use odorant.

The bulk of hydrogen transmission pipelines are operated by two companies and are located primarily in Texas and Louisiana. For the reasons discussed earlier in this final rule, relieving operators of hydrogen pipelines from the odorization requirement will not sacrifice safety and thus no additional testing or monitoring is needed.

Because only 6 members of the TPSSC responded to the mail ballot, the TPSSC considered the proposal at its May 7, 1996 meeting. All twelve TPSSC members present voted in favor of the proposal.

Corrections

In the NPRM, RSPA provided an incorrect address for the American Society for Testing and Materials (ASTM). The correct town is "West Conshohocken, PA," not "Conshohocken, PA," as noted in the NPRM. Thus, the correct address for ASTM is 100 Barr Harbor Drive, West Conshohocken, PA, 19428. The NPRM also incorrectly named the latest edition of NFPA-59A as the 1994 edition. The latest edition is the 1996 edition. This information is incorporated in the final rule where appropriate. Finally, Section 192.189 is corrected to reflect the appropriate nomenclature of ANSI/NFPA 70 as the "National Electrical Code," not "National Electric Code" as named in the NPRM.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget (OMB). The final rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Executive Order 12612

The final rule has been analyzed with the principles and criteria in Executive Order 12612 (Federalism), and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

Based on the facts available, I certify that this final rule will not, have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

List of Subjects

49 CFR Part 192

Incorporation by reference, Natural gas, Pipeline Safety.

49 CFR Part 193

Incorporation by reference, Liquefied natural gas (LNG), Pipeline safety.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Incorporation by Reference, Petroleum, Pipeline safety.

In consideration of the foregoing, RSPA to amends 49 CFR Parts 192, 193, and 195 as follows:

Part 192 [AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60118; 49 CFR 1.53

2. Paragraph (a)(1) of section 192.63 is revised to read as follows:

§192.63 Marking of materials.

(a)

(1) As prescribed in the specification or standard to which it was manufactured, except that thermoplastic fitting must be marked in accordance with ASTM D 2513; or

3. Paragraph (c) of section 192.189 is revised to read as follows:

§192.189 Vaults: Drainage and waterproofing.

- (c) Electrical equipment in vaults must conform to the applicable requirements of Class I,

Group D, of the National Electrical Code, ANSI/NFPA 70.

4. Section 192.625 is amended by revising paragraphs (b)(2)(iv)(C) and (b)(3) and by adding paragraph (b)(4) to read as follows:

§192.625 Odorization of gas.

- (b)
- (2)
- (iv)
- (C) Reduces the percentage completion of a chemical reaction;
- (3) In the case of a lateral line which transports gas to a distribution center, at least 50 percent of the length of that line is in a Class 1 or Class 2 location; or
- (4) The combustible gas is hydrogen intended for use as a feedstock in a manufacturing process.

5. Appendix A of Part 192 is amended by revising paragraphs I, D, II, A (1), (3) and (4), II, B, II, C (3)-(6), and II, E to read as follows:

Appendix A to Part 192 -- Incorporated by Reference

I. List of organizations and addresses.

D. American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.

II. Documents incorporated by reference. (Numbers in parentheses indicate applicable editions.)

A.

(1) API Specification 5L "Specification for Line Pipe (41st edition, 1995).

(3) API Specification 6D "Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves)" (21st edition, 1994).

(4) API Standard 1104 "Welding of Pipelines and Related Facilities" (18th edition, 1994).

B. American Society for Testing and Materials (ASTM):

(1) ASTM Designation: A53 "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless" (A53-94).

(2) ASTM Designation: A106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A106-94).

(3) ASTM Designation: A333/A333M "Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service" (A333/A333M-94).

(4) ASTM Designation: A372/A372M "Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels" (A372/A372M-95).

(5) ASTM Designation: A381 "Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems" (A381-93).

(6) ASTM Designation: A671 "Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (A671-94).

(7) ASTM Designation: A672 "Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (A672-94).

(8) ASTM Designation: A691 "Standard Specification for Carbon and Alloy Steel Pipe,

Electric-Fusion-Welded for High-Pressure Service at High Temperatures" (A691-93).

(9) ASTM Designation D638 "Standard Test Method for Tensile Properties of Plastics" (D638-94b).

(10) ASTM Designation D2513 "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing and Fittings" (D2513-87 edition for §192.63(a)(1), otherwise D2513-95a).

(11) ASTM Designation D2517 "Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings" (D2517-94).

C.

(3) ASME Boiler and Pressure Vessel Code, Section I "Power Boilers" (1995 edition with addenda).

(4) ASME Boiler and Pressure Vessel Code, Section VIII, Division 1 "Pressure Vessels" (1995 edition with addenda).

(5) ASME Boiler and Pressure Vessel Code, Section VIII, Division 2 "Pressure Vessels: Alternative Rules" (1995 edition with addenda).

(6) ASME Boiler and Pressure Vessel Code, Section IX "Welding and Brazing Qualifications" (1995 edition with addenda).

E. National Fire Protection Association (NFPA):

(1) ANSI/NFPA 30 "Flammable and Combustible Liquids Code" (1995).

(2) ANSI/NFPA 58 "Standard for the Storage and Handling of Liquefied Petroleum Gases" (1995).

(3) ANSI/NFPA 59 "Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants" (1995).

(4) ANSI/NFPA 70 "National Electrical Code" (1996).

Part 193 [AMENDED]

1. The authority citation for Part 193 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118; 49 CFR 1.53

2. Appendix A to Part 193 is amended by revising paragraphs II. C, II. D (1) and (3), II. E, II. F, and II. G, to read as follows:

Appendix A to Part 193 - Incorporation by Reference

II. Documents Incorporated by Reference. (Numbers in Parentheses Indicate Applicable Editions.)

C. American Society of Civil Engineers (ASCE):

1. ASCE 7-88 Minimum Design Loads for Buildings and Other Structures (1995)

D.

1. API Specification 6D Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves) (21st edition, 1994).

2.

3. API Standard 1104 Welding of Pipelines and Related Facilities (18th edition, 1994).

E. American Society of Mechanical Engineers (ASME):

1. ASME/ANSI B31.3 Chemical Plant and Petroleum Refinery Piping (1993).
2. ASME/ANSI B31.5 Refrigeration Piping (1992).
3. ASME/ANSI B31.8 Gas Transmission and Distribution Piping Systems (1995).
4. ASME Boiler and Pressure Vessel Code, Section I Power Boilers (1995 edition with Addenda).
5. ASME Boiler and Pressure Vessel Code, Section IV, Heating Boilers (1995 edition with Addenda).
6. ASME Boiler and Pressure Vessel Code, Section VIII, Division 1 Pressure Vessels (1995 edition with Addenda).
7. ASME Boiler and Pressure Vessel Code, Section VIII, Division 2, Pressure Vessels: Alternative Rules (1995 edition with Addenda).
8. ASME Boiler and Pressure Vessel Code, Section IX, Welding and Brazing Qualifications (1995 edition with Addenda).

F. International Conference of Building Officials (ICBU):

1. Uniform Building Code (UBC) (1994).

G. National Fire Protection Association (NFPA):

1. ANSI/NFPA 30 Flammable and Combustible Liquids Code (1993)
2. ANSI/NFPA 37 Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines (1994).
3. ANSI/NFPA 51B Standard for Fire Prevention in Use of Cutting and Welding Processes (1994).
4. ANSI/NFPA 59A Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG) (1972 edition for §193.2005(c), otherwise 1996 edition).
5. ANSI/NFPA 70 National Electrical Code (1996).

Part 195 [AMENDED]

1. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; 49 CFR 1.53

2. Section 195.3 is amended by revising paragraph (b)(6) and paragraph (c) to read as follows:

§195.3 Matter incorporated by reference.

(b) (6) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Conshohocken, PA 19428.

(c) The full title for the publications incorporated by reference in this part are as follows. Numbers in parentheses indicate applicable editions:

- (2) American Petroleum Institute (API):
 - (i) API Specification 5L "Specification for Line Pipe" (41st edition, 1995).
 - (ii) API Specification 6D "Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves)" (21st Edition, 1994).
 - (iii) API Specification 1104 "Welding of Pipelines and Related Facilities" (18th edition, 1994).

- (3) American Society of Mechanical Engineers (ASME):
- (i) ASME/ANSI B16.9 "Factory-Made Wrought Steel Butt Welding Fittings" (1993).
 - (ii) ASME/ANSI B31.4 "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols" (1992 edition with 1994 addenda).
 - (iii) ASME/ANSI B31.8 Gas Transmission and Distribution Piping Systems (1995)
 - (iv) ASME/ANSI B31G Manual for Determining the Remaining Strength of Corroded Pipelines (1991).
 - (v) Boiler and Pressure Vessel Code, Section VIII, Division 1 "Pressure Vessels" (1995 with Addenda).
 - (vi) ASME Boiler and Pressure Vessel Code, Section IX "Welding and Brazing Qualifications" (1995 with Addenda).
- (4) Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):
- (i) MSS SP-75 "Specification for High Test Wrought Butt Welding Fittings" (1993).
 - (ii) [Reserved]
- (5) American Society for Testing and Materials (ASTM):
- (i) ASTM Designation: A 53 "Standard specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless" (A 53-94).
 - (ii) ASTM Designation: A 106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A 106-94).
 - (iii) ASTM Designation: A 333/A 333M "Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service" (A 333/A 333M-94).
 - (iv) ASTM Designation: A 381 "Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems" (A 381-93).
 - (v) ASTM Designation: A 671 "Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (A 671-94).
 - (vi) ASTM Designation: A 672 "Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (A 672-94).
 - (vii) ASTM Designation: A 691 "Standard Specification for Carbon and Alloy Steel Pipe Electric-Fusion-Welded for High-Pressure Service at High Temperatures" (A 691-93)

Issued in Washington, DC on May 16, 1996.

Rose A. McMurray
Acting Deputy Administrator

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Billing Code: 49.0-60-P

Docket No. PS-143; Amdt. 192-76A

DEPARTMENT OF TRANSPORTATION

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

49 CFR Parts 192, 193, and 195

[Docket No. PS-143; Amdts. 192-76A, 193-11, 195-56]

RIN 2137-AC74

Periodic Updates to the Pipeline Safety Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Corrections to the final rule.

SUMMARY: On May 24, 1996, RSPA published a final rule in the Federal Register (61 FR 26121) titled "Periodic Updates to the Pipeline Safety Regulations." This final rule updated the references to voluntary specifications and standards to reflect more recently published editions of each document, enabling pipeline operators to utilize current technology, materials, and practices, thereby reducing costs and enhancing economic growth. The final rule also eliminated the requirement for odorization of hydrogen transmission lines in cases where the odorization interferes with industrial end uses. Consistent with President Clinton's Regulatory Reinvention Initiative, these actions eliminated unnecessary regulatory burdens without compromising safety. This document makes minor corrections to the final rule to provide consistency in the regulations.

EFFECTIVE DATE: August 14, 1996.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366-0918, regarding the subject matter of this document; or the Dockets Unit, (202) 366-4453; for copies of this document or other materials in the docket.

SUPPLEMENTARY INFORMATION:

Need for Correction

The final rule did not make note of amendment numbers to properly revise the pipeline safety laws. The amendment numbers for Docket No. PS-143 are "Amdt. 192-76; 193-11; 195-56."

In Section 192.63(a)(1) of the final rule, the word "fitting" is improperly used in discussing the marking of thermoplastic fittings in accordance with ASTM D 2513. The word "fittings" should replace the word "fitting."

The final rule also updated two references to the address of the American Society for Testing and Materials (ASTM). However, the correct address was not updated in the amended Section 195.3(b)(6). The address was listed as "Conshohocken, PA" not "West Conshohocken, PA," as correctly noted in the amended Appendix A of Part 192. To provide consistency in the pipeline safety regulations, this document corrects section 195.3(b)(6) to reflect the accurate address for ASTM. The

correct address is "American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428."

Finally, the updated editions of voluntary consensus standards included in Appendix A of Part 192 were not updated in Appendix B--"Qualification of Pipe." Appendix B lists the pipe specifications incorporated by reference in Part 192. For consistency, the specifications in Appendix B should accurately reflect the updated references in Appendix A. This document updates the specifications in Appendix B to match Appendix A.

Correction of Publication

Accordingly, the publication on May 24, 1996, of the final rule (61 FR 26121) is corrected as follows:

Section 192.63 [Corrected]

On Page 276122, in the third column, in Sec. 192.63, paragraph (a)(1), in line four, the word "fitting" is corrected to read "fittings."

Appendix B to Part 192 [Revised]

On Page 26123, in the third column, a new amendatory instruction is added following amendment 5.

6. Appendix B to Part 192, section I, is revised to read as follows:

Appendix B to Part 192--Qualification of Pipe

I. Listed Pipe Specifications (Numbers in Parentheses Indicate Applicable Editions)

API 5L--Steel pipe (1995).
ASTM A 53--Steel pipe (1995a).
ASTM A 106--Steel pipe (1994a).
ASTM A 333/A 333M--Steel pipe (1994).
ASTM A 381--Steel pipe (1993).
ASTM A 671--Steel pipe (1994).
ASTM A 672--Steel pipe (1994).
ASTM A 691--Steel pipe 9(1993).
ASTM D 2513--Thermoplastic pipe and tubing (1995c).
ASTM D 2517--Thermosetting plastic pipe and tubing (1994).

Section 195.3 [Corrected]

On Page 26123, in the third column, in Sec. 195.3, paragraph (b)(6), in line three, the name "Conshohocken" is corrected to read "West Conshohocken."

These updates were incorporated in the final rule, so RSFA does not need further rulemaking action to correct the updated specifications in Appendix B of Part 192. The purpose of this Notice is to

provide consistency in the pipeline safety regulations. RSPA regrets any confusion this error may have occasioned, and publishes this document to provide clarification to all affected parties of this rulemaking.

Issued in Washington, DC on July 3, 1996.

Richard B. Felder,
Associate Administrator for Pipeline Safety.

[FR Doc. 96-17580 Filed 7-12-96; 8:45 am]

Billing Code: 4910-60-P

Docket PS-125, Notice 2; Amdt. 192-77

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 191, 192 and 193

(Amdts. 190-7, 191-11, 192-77, 193-12)

[Docket PS-125; Notice 2]

RIN 2137-AC28

Regulatory Reinvention Initiative: Pipeline Safety Program Procedures; Reporting Requirements; Gas Pipeline Standards; and Liquefied Natural Gas Facilities Standards

AGENCY: Research and Special Programs Administration (RSPA), DOT

ACTION: Final rule.

SUMMARY: This final rule changes various administrative practices in the pipeline safety program and makes minor modifications to requirements for gas detection, protective enclosures, and pipeline testing temperatures. These changes will eliminate unnecessary or overly burdensome requirements, and reduce costs in the pipeline industries without compromising safety.

EFFECTIVE DATE: The effective date of this final rule is July 3, 1996. However, affected parties will not have to comply with the information collection requirements in 49 CFR Part 193 until the DOT publishes in the **Federal Register** the Control Numbers assigned by the Office of Management and Budget (OMB) to these collection of information requirements. Publication of the Control Numbers notifies the public that OMB has approved these requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, (202) 366-5523 or online at herrickl@rspa.dot.gov regarding the subject matter of this final rule, or the Dockets Unit, (202) 3665046, regarding copies of this final rule or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background:

In a memorandum dated March 4, 1995, the President provided direction to the heads of Departments and agencies on carrying out his Regulatory Reform Initiative for reinventing the government. As part of this initiative, RSPA established a program to review existing pipeline safety regulations in order to identify those that were outdated or in need of reform.

On April 5, 1995, RSPA published a notice in the **Federal Register** soliciting comments from the pipeline industry as well as other interested parties (60 FR 17295, April 5, 1995). RSPA also conducted

three outreach meetings in 1995 in Dallas, TX, Lakewood CO, and Houston, TX. Many comments were received both at the outreach meetings and in response to the Federal Register notice.

As a result of these comments, RSPA revisited this rulemaking which began in 1992. On November 6, 1992, RSPA published a notice of proposed rulemaking (NPRM) (57 FR 53085, November 6, 1992) proposing changes to Parts 190, 191, 192 and 193. The comment period closed on December 7, 1992. RSPA received comments from 22 regulated pipeline companies, three pipeline trade associations, one consultant, one technical committee, and two state agencies (29 total comments received).

RSPA also requested a review of the proposal affecting natural gas facilities by mail balloting from the Technical Pipeline Safety Standards Committee (TPSSC). This 15-member committee was established by statute to consider the feasibility, reasonableness, and practicability of all proposed pipeline safety regulations.

After initial balloting, each TPSSC member reviewed the ballots and comments of each of the other members, and had the option to change his or her initial vote or comment if desired. Although some TPSSC members did not vote on every proposed change, a majority of TPSSC members found all the changes adopted by this rule to be technically feasible, reasonable, and practicable.

Changes to Part 190 Requirements

§190.203 Inspections.

Section 190.203(c) currently requires that, after an Office of Pipeline Safety (OPS) inspection, an operator must respond to a "Request for Specific Information within 30 days." RSPA proposed amending this section to increase the time to 45 days. The increase would enable the operator to provide RSPA with more complete information to use in evaluating inspection results.

RSPA received 19 comments from operators, State regulatory agencies and trade groups in response to this proposal. All commenters agreed that the time period should be extended. In addition, one commenter suggested that a further extension be granted to cases involving detailed "specific information" that may require longer than 45 days to gather.

RSPA Response

RSPA believes that 45 days will usually be adequate. In situations where more time is required the Regional Director has the authority to extend the time allowed for a response. Therefore, the revision is adopted as proposed.

§190.209 Response Options.

RSPA proposed deleting section 190.209(c). Section 190.209(c) currently allows a respondent to offer a compromise to a Notice of Probable Violation and Proposed Civil Penalty by submitting a check or money order for the amount offered to the Regional Director who forwards the offer to the Associate Administrator, OPS for action. If the Associate Administrator, OPS, accepts the offer in compromise, the respondent is notified in writing that the acceptance is in full settlement of the civil penalty action. If an offer in compromise is rejected, it is returned to the respondent with written notification.

RSPA received 19 comments from operators, State regulatory agencies and trade groups on the proposed deletion of §190.209(c). Most commenters agreed with the proposed deletion. Two commenters disagree with the proposed deletion, preferring to retain the option and stating that §190.209(c) does not place an undue regulatory burden upon industry.

All commenters observed that the deletion also affects §190.209(a)(2) and §§190.227(a), (b), and

(d) and that these sections should also be revised for consistency.

RSPA Response

Under current Federal policy, assessment of a penalty is not contemplated until after a finding of violation. As a result, RSPA has not routinely resolved cases without such findings. The submission of a check prior to establishing a finding of violation unnecessarily restricts a company's cash flow during the pendency of the enforcement case. Therefore, RSPA is adopting this provision as proposed. In addition, RSPA is adopting the commenters' suggestions concerning §§190.209(a)(2); 190.227(a); 190.227(b); and 190.227(d).

Section §190.211(b)

Section 190.211(b) currently provides that in circumstances deemed appropriate by the Regional Director, and only if the respondent concurs, a telephone conference may be held in lieu of a hearing. RSPA proposed to require a telephone hearing for all probable violations involving penalty amounts under \$10,000 in which a hearing is requested.

Five commenters responded to this proposal stating that they believe the respondent should have the option of dealing with any probable violation in person. These commenters argue that the dollar amount of the assessment for an alleged violation may not be indicative of the complexity of the case.

RSPA Response

RSPA believes that the current practice of conducting telephone hearings where the amount is less than \$10,000 is cost effective. However, based upon the comments received, RSPA will allow respondents to request in-person hearings. Therefore, the section is amended to establish telephone hearings as the preferred rather than required method for amounts less than \$10,000.

Section 190.211(c)

§190.211(c) currently states that a hearing may, under limited circumstances, be conducted by a representative of the OPS region in which the facility is located. RSPA proposed in the NPRM that all hearings be conducted by an attorney from the Office of the Chief Counsel of RSPA. All commenters agree with this proposal.

RSPA Response

The section is amended as proposed.

Section 190.211(e)

Section 190.211(e) currently states that at the outset of a hearing in response to a Notice of Probable Violation, the material in the case file pertinent to the issues to be determined is presented by the presiding official of the hearing. The respondent may examine and respond to or rebut this material.

RSPA proposed to revise this regulation to provide the respondent the opportunity to review material in the case file pertinent to the issues prior to any hearing.

RSPA received 20 comments in response to the proposed amendments to §190.211. The comments were provided by an array of trade organizations, state regulatory agencies and operators. All commenters agree with the proposed language. However, two commenters recommend that the case file be automatically provided to all respondents at least 30 days before the hearing. They conclude that any respondent requesting a hearing will want to review all material in the case file and that automatically providing the material would eliminate unnecessary correspondence between the respondent and the agency.

RSPA Response

RSPA agrees that a copy of the case file should be provided to a respondent prior to a hearing. However, this practice should not include automatic mailing of a case file when a request for a hearing is submitted to the agency. The respondent may wish to address only some of the issues in the Notice of Probable Violation in the hearing; thus mailing the entire file may in some instances result in unnecessary expense. Therefore, §190.211 is amended as proposed in the NPRM. Section 190.211(f) is also amended to clarify that the respondent will continue to have the opportunity to offer any relevant information during the hearing.

Section 190.215 Petitions for reconsideration.

Section 190.215(d) currently states that the filing of a petition for reconsideration does not stay the effectiveness of the final order. The proposed revision would automatically stay payment of any civil penalty assessed if a petition for reconsideration is filed. This will result in cost savings to the pipeline operator by delaying civil penalty payments until a decision is made on the petition for reconsideration.

RSPA received 20 comments on the proposed rule from operators, State regulatory agencies and trade groups. All commenters support the proposed amendment. Two commenters suggested that all requirements or actions contained in a final order be stayed because the final order may require the respondent to make significant facility or operational modifications that may exceed the cost of any civil penalty and these expenses should be delayed, until final resolution of the case, unless a clear public safety risk exists.

RSPA Response

RSPA agrees that final orders requiring significant facility or operational modifications should sometimes be delayed until final resolution of the case. However, because an automatic stay could delay corrective actions related to safety without an evaluation of any potential impact of the delay, the rule does not provide for an automatic stay in the case of orders requiring action other than the payment of money. Stays in cases involving corrective action will be considered on a case-by-case basis.

Section 190.227 Payment of penalty.

Section 190.227(a) currently states that payment of a civil penalty must be made by certified check or money order payable to the "Department of Transportation." RSPA proposed to continue to allow this method for a civil penalty of less than \$10,000. Under new section 190.227(b), RSPA proposed to require that payments of \$10,000 or more be made by wire transfer through the Federal Reserve Communications System to the account of the U.S. Treasury.

In response to the proposed amendment of §190.227, RSPA received 20 comments from operators, State regulatory agencies, and trade groups. Most commenters agree with the proposed amendment. One commenter recommends that the proposed language in §190.227(b) be modified to read "twenty business days or thirty calendar days." This, he suggests, would aid smaller companies.

Four commenters disagree with the proposed changes to the regulation. They question RSPA's need to require wire transfers of civil penalties of \$10,000 or more. They argue that this restriction serves no purpose and unnecessarily limits the options of payees.

RSPA Response

RSPA is required by Departmental regulations (49 CFR 89.21(b)(3)) to collect amounts over \$10,000 through wire transfer. Therefore, the proposed amendment to section 190.227 will be adopted.

Changes to Part 191 Requirements

The following discussion explains the changes in Part 191:

Section 191.1 Scope

Currently section 191.1(b)(1) contains the phrase on the Outer Continental Shelf (OCS). RSPA proposed to delete this phrase because the regulation does not clearly specify where the applicability of Part 191 begins on offshore gathering lines in state waters. An operator recommended a similar change in comments responding to an NPRM proposing to clarify the definition of gathering lines (56 FR 48505; September 25, 1991; Docket PS-122).

RSPA's revision will clarify that Part 191 does not apply to field production lines; i.e., flow lines in state offshore waters, similar to the present exception on the OCS. No substantive comments were received in response to this proposal.

RSPA Response

Therefore, RSPA is amending section 191.1 as proposed.

Changes to Part 192 Requirements

The following discussion explains the change to Part 192:

Section 192.513 Test requirements for Plastic Pipelines

This regulation prescribes minimum test requirements for plastic pipelines to ensure discovery of all potentially hazardous leaks. RSPA proposed to amend paragraph (c) of the rule to clarify that, at elevated temperatures, the test pressure is limited by the reduced hydrostatic strength of the thermoplastic material. RSPA also proposed to amend paragraph (d) of the rule which would benefit pipeline operators who during hot summer days are unable to pressure test newly constructed pipelines because the temperature of the thermoplastic material exceeds 38°C (100°F). The proposal would permit field pressure testing up to the same temperature used to determine hydrostatic design strength as defined by the design pressure formula in §192.121.

In response to the proposal, RSPA received 21 comments from operators, State regulatory agencies, and trade groups. Most commenters supported the intent of the proposed rule. However, a few

commenters said that the wording of the proposed rule would undermine the intent. They were concerned that although the proposed rule would raise the temperature limit for testing of some pipelines (those with a long-term hydrostatic strength based on a temperature above 38oC (100oF)), it would lower the currently allowable temperature limit for other pipelines (those whose long-term hydrostatic strength is based on a design temperature of less than 38oC (100oF)).

One commenter stated that many operators base their pressure ratings for plastic pipe on a standard temperature of 23°C (73°F). For many parts of the United States, this design standard is adequate because it exceeds the operating temperature of buried plastic piping in those geographical regions. However, temperatures above ground often exceed 23°C (73°F). The proposed rule would prohibit operators for whom this applies from conducting pressure tests on hotter days until temperatures fall below 23°C (73° F). The commenters suggested a better approach would be to limit test temperatures to the temperature at which the long-term hydrostatic design basis was determined only if the temperatures of the plastic piping material exceed 38oC (100° F).

RSPA Response

RSPA recognizes the difficulties associated with the language of the proposed rule. To better express the intent of this rule, the maximum temperature limit for testing of plastic pipelines will be set at either 380C (100°F) or the temperature at which the long-term hydrostatic test was determined, whichever is greater.

In the discussion of the NPRM, it was stated that the Gas Piping Technology Committee (GPTC) proposed modified language in §§192.513(c) and (d). The GPTC has notified RSPA that although the GPTC Plastic Task Group is considering a similar proposal, the GPTC has not proposed any modified language.

Changes to Part 193 Requirements

The following discussion explains the changes to Part 193.

Section 193.2819 Gas detection.

Operators at LNG plants must continuously monitor all enclosed buildings for hazardous concentrations of flammable gases and vapors, using permanent detection systems that provide visible or audible alarms (§193.2819(f)). All enclosed buildings must be monitored, even if the building is not connected to a source of flammable fluid. For example, a tool shed that does not house a flammable fluid and is not connected to a source of flammable fluid must have a fixed gas detection and alarm system. Because RSPA's review concluded that the risk of flammable gas or vapor accumulating inside such buildings is negligible, we proposed to apply §193.2819(f) only to buildings "that house a flammable fluid or are connected by piping or conduit to a source of flammable fluid."

Twelve TPSSC members supported the proposal completely, one member supported it but recommended deletion of "or conduit," and two members abstained. The reason given for deleting "or conduit" was that the National Electrical Code (NEC), referenced in Part 193, requires conduits between hazardous and non-hazardous areas to be sealed to prevent accidental migration of flammable gas or vapor.

RSPA received comments on the proposed rule from 15 operators, two pipeline-related associations, and one consultant. None of these commenters objected to the proposal. However, two commenters suggested we delete "or conduit" because of the NEC safeguard mentioned above, while two others suggested that "conduit" be modified by "uninterrupted."

Two commenters recommended that RSPA expand the proposed exception to include buildings whose only source of flammable fluid is fuel for heating or cooking. When these sources were low pressure and odorized, it was concluded that they posed minimal risk.

RSPA Response

Deleting the words "or conduit" would not be appropriate because all existing conduits may not have been installed under current NEC standards and thus may not be sealed against possible intrusion of gas. However, in the final rule, RSPA has added the word "uninterrupted" between "or" and "conduit". This will relieve an operator from the need to protect a building which is sealed pursuant to the NEC against accidental migration of gas or vapor. We did not adopt the comment to expand the proposed exception to buildings whose only source of flammable fluid is fuel. The risk is not minimal in the context of an LNG plant. When LNG is piped into a building for heating or cooking, there is an opportunity for gas to escape undetected inside the building and ignite. However slight this opportunity, the potential consequences of any building fire or explosion are magnified by the LNG plant setting. Thus, we do not believe the existing rule should be relaxed further to exclude buildings whose only source of flammable fluid is gas for heating or cooking.

Section 193.2907 Protective enclosure construction.

Paragraphs (b)(1) through (3) and (c) of this rule dictate specific material and design features of protective enclosures (i.e., fences and walls) that surround certain LNG facilities. For example, fences must be chainlink of at least No. 11 American wire gauge. RSPA's review concluded that such prescriptive requirements are unnecessary and overly burdensome in view of the performance standard under §193.2907(a) governing the design and construction of protective enclosures. That standard provides that each protective enclosure must have sufficient strength and configuration to obstruct unauthorized access to the facilities enclosed. RSPA, therefore, proposed to repeal the prescriptive requirements and rely solely on the performance standard.

Twelve TPSSC members fully supported the proposal, one member supported it but recommended an editorial change, and two members abstained. The editorial change was not explained and has not been adopted.

RSPA received comments on the proposed rule from 12 operators and one pipeline-related association. Each of these commenters supported the proposal.

RSPA Response

Therefore, §193.2907 is amended as proposed.

Rulemaking Analyses:

Paperwork Reduction Act.

Documentation for the information collection requirements for Parts 191 and 193 was submitted to the Office of Management and Budget (OMB) during the original rulemaking processes. Currently, regulations in Part 191 are covered by OMB Control Numbers 2137-0522 and 2137-0578. The Control Numbers for regulations in Part 193 have expired and are currently in the process of renewal through review by OMB. Under the Paperwork Reduction Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. Therefore the information

collection requirements of Part 193 will not be effective until the renewal process is complete and is announced in a subsequent Federal Register notice. The applicable Control Number will remain 2137-0048. Part 190 imposes no paperwork requirements on the pipeline industry. Regulations in Part 192 are covered by OMB Control Numbers 2137-0049 and 2137-0583. The notice proposed no additional information collection requirements. Accordingly, there is no need to repeat those submissions in this final rule.

E. O. 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore was not subject to review by the Office of Management and Budget. The rule is not significant under the Regulatory Policies and Procedures of the DOT (44 FR 11034, February 26, 1979). A Regulatory Evaluation has been prepared and is available in the Docket. RSPA estimates the changes to existing rules will result in an estimated savings of \$1,200,000 for the pipeline industry, without associated costs and with no adverse affect on safety. As discussed above, these savings will come largely from the elimination of unnecessary requirements.

Regulatory Flexibility Act

Few of the companies subject to this rulemaking meet the criteria for small companies. However, RSPA sought such impact information in response to this rulemaking. Accordingly, based on the facts available concerning the impact of the proposal and the response received, I certify under Section 605 of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities.

E. O. 12612

RSPA has analyzed the rule changes under the criteria of Executive Order 12612 (52 FR 41685, October 30, 1987). We find it does not warrant preparation of a Federalism Assessment.

List of Subjects

49 CFR Part 190

Administrative practice and procedure, Penalties, and Pipeline safety.

49 CFR Part 191

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 193

Fire prevention, Pipeline safety, Reporting and recordkeeping requirements, and Security measures. In consideration of the foregoing, RSPA is amending 49 CFR Parts 190, 191, 192, and 193 as

follows:

Part 190 - [AMENDED]

1. The authority citation for Part 190 continues to read as follows:

Authority: 49 U.S.C. 5123, 60108, 60112, 60117, 60118, 60120, 60122, and 60123; and 49 CFR 1.53.

2. Section 190.203 is amended by revising paragraph (c) to read as follows:

§190.203 Inspections.

* * *

(c) If, after an inspection, the Associate Administrator, OPS believes that further information is needed to determine appropriate action, the Associate Administrator, OPS may send the owner or operator a "Request for Specific Information" to be answered within 45 days after receipt of the letter.

* * *

3. Section 190.209 is amended by removing paragraph (a)(2); by redesignating paragraph (a)(3) as paragraph (a)(2); by redesignating paragraph (a)(4) as (a)(3); and by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

4. Section 190.211 is amended by revising paragraphs (b), (c) and (e) to read as follows:

§190.211 Hearing.

* * *

(b) A telephone hearing will be held if the amount of the proposed civil penalty or the cost of the proposed corrective action is less than \$10,000 unless the respondent submits a written request for an in-person hearing. Hearings are held in a location agreed upon by the presiding official, OPS and the respondent.

(c) An attorney from the Office of the Chief Counsel, Research and Special Programs Administration, serves as the presiding official at the hearing.

* * *

(e) Upon request by respondent, and whenever practicable, the material in the case file pertinent to the issues to be determined is provided to the respondent 30 days before the hearing. The respondent may respond to or rebut this material at the hearing.

(f) During the hearing, the respondent may offer any facts, statements, explanations, documents, testimony or other items which are relevant to the issues under consideration.

* * *

5. Section 190.215 is amended by revising paragraph (d) to read as follows:

§190.215 Petitions for reconsideration.

* * *

(d) The filing of a petition under this section stays the payment of any civil penalty assessed. However, unless the Associate Administrator, OPS otherwise provides, the order, including any

required corrective action, is not stayed.

6. Section 190.227 is amended by revising paragraphs (a) and (b); and by removing paragraphs (c) and (d) to read as follows:

§190.227 Payment of penalty.

(a) Except for payments exceeding \$10,000, payment of a civil penalty proposed or assessed under this subpart may be made by certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125, or by wire transfer through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Payments exceeding \$10,000 must be made by wire transfer. Payments, or in the case of wire transfers, notices of payment, must be sent to the Chief, General Accounting Branch (M-86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

(b) Payment of a civil penalty assessed in a final order issued under §190.213 or affirmed in a decision on a petition for reconsideration must be made within 20 days after receipt of the final order or decision. Failure to do so will result in the initiation of collection action, including the accrual of interest and penalties, in accordance with 31 U.S.C. §3717 and 49 C.F.R. Part 89.

Part 191 - [AMENDED]

1. The authority citation for Part 191 continues to read as follows:

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, and 60124; and 49 CFR 1.53.

2. Section 191.1 is amended by revising paragraph (b)(1) to read as follows:

§191.1 Scope.

(b) (1) Offshore gathering of gas upstream from the outlet flange of each facility where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream; or

(1) Offshore gathering of gas upstream from the outlet flange of each facility where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream; or

Part 192 - [AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

2. Section 192.513 is amended by revising paragraphs (c) and (d) to read as follows:

§192.513 Test requirements for plastic pipelines.

(c) The test pressure must be at least 150 percent of the maximum operating pressure or 50 psig.

whichever is greater. However, the maximum test pressure may not be more than three times the pressure determined under §192.121, at a temperature not less than the pipe temperature during the test.

(d) During the test, the temperature of thermoplastic material may not be more than 38 deg C (100 deg F), or the temperature at which the material's long-term hydrostatic strength has been determined under the listed specification, whichever is greater.

Part 193 - [AMENDED]

1. The authority citation for Part 193 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60110, and 60113; 60118; and 49 CFR 1.53.

2. Section 193.2819 is amended by revising paragraph (f) to read as follows:

§193.2819 Gas detection.

* * *

(f) All enclosed buildings that house a flammable fluid or are connected by piping or uninterrupted conduit to a source of flammable fluid must be continuously monitored for the presence of flammable gases and vapors with a fixed flammable gas detection system that provides a visible or audible alarm outside the enclosed building. The systems must be provided and maintained according to the applicable requirements of ANSI/NFPA 59A.

3. Section 193.2907 is amended by revising paragraphs (a) and (b) to read as follows:

§193.2907 Protective enclosure construction.

(a) Each protective enclosure must have sufficient strength and configuration to obstruct unauthorized access to the facilities enclosed.

(b) Openings in or under protective enclosures must be secured by grates, doors or covers of construction and fastening of sufficient strength such that the integrity of the protective enclosure is not reduced by any opening.

Issued in Washington D.C. on May 23, 1996.

Kelley S. Coyner,

Acting Deputy Administrator Research and Special Programs Administration

[FR Doc. 96-13770 Filed 5-31-96; 8:45 am]

BILLING CODE 4910-60-P

Docket PS-124; Amdt. 192-78

DEPARTMENT OF TRANSPORTATION

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

49 CFR Part 192

[Docket PS-124; Amdt. 192-76]

(Amdt. 192-78)

RIN 2137-AC25

Regulatory Review; Gas Pipeline Safety Standards

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule changes miscellaneous gas pipeline safety regulations to provide clarity, eliminate unnecessary or burdensome requirements, and foster economic growth. The changes result from a comprehensive review of the regulations RSPA has completed under President Clinton's Regulatory Reinvention Initiative to reduce the burden of government regulations. The changes are intended to reduce the costs of compliance without compromising safety.

EFFECTIVE DATE: This final rule is effective July 8, 1996. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 8, 1996.

FOR FURTHER INFORMATION CONTACT: A. C. Garnett, (202) 366-2036, or L. M. Furrow, (202) 366-4559, regarding the subject matter of this amendment, or the Dockets Unit, (202) 366-5046 regarding copies of this amendment or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

Early in 1992, RSPA began an extensive review of the federal gas pipeline safety regulations (49 CFR Part 192) and invited the public to participate (57 FR 4745, Feb. 7, 1992). The review was to see what changes were necessary to provide clarity, eliminate unnecessary or overly burdensome requirements, and foster economic growth. As a result of the review, RSPA published a Notice of Proposed Rulemaking (NPRM), proposing changes to 38 regulations in part 192 (Notice 1; 57 FR 39572; Aug. 31, 1992).

Then the National Association of Pipeline Safety Representatives (NAPSR) reported on a

separate but related review of part 192. RSPA had asked NAPSRS to identify regulations in part 192 that may not assure safety or that may be hard to enforce. Because the NAPSRS report concerned a few of the regulations covered by the NPRM and had similar goals, we published the report and requested public comment on its various recommended rule changes (Notice 2; 58 FR 59431; Nov. 9, 1993). At the same time, we announced that in developing final rules under the NPRM, we would consider comments on any NAPSRS recommendations that addressed the same issues as the NPRM. The period for public comment on the NAPSRS recommendations was extended 90 days until April 11, 1994 (Notice 3; 58 FR 68382; Dec. 27, 1993).

Later on, President Clinton launched the Regulatory Reinvention Initiative (memorandum for Heads of Departments and Agencies; March 4, 1995), which among other things, directed DOT and other Federal agencies to review and revise existing regulations to remove unnecessary or burdensome requirements. Today's publication of this Final Rule is a major step in carrying out that directive with respect to DOT's pipeline safety regulations.

Advisory Committee

The Technical Pipeline Safety Standards Committee (TPSSC), consisting of 15 members, was established by statute to consider the feasibility, reasonableness, and practicability of proposed pipeline safety regulations. In developing the final regulations, RSPA considered all final TPSSC votes and comments on the NPRM, including minority positions. A more detailed consideration of the TPSSC action is contained in the following section-by-section discussion of comments. A record of the TPSSC deliberation is available in the docket.

Discussion of Comments

RSPA received comments on the NPRM from 36 pipeline operators, 9 pipeline-related associations, 1 state agency, and 8 other commenters. More commenters submitted views on the NAPSRS recommendations: 58 pipeline operators, 10 pipeline-related associations, 4 state agencies, and 5 other commenters.

The following discussion on development of the final rules explains how we treated TPSSC positions, comments on the NPRM, and comments on NAPSRS recommendations related to NPRM proposals (§§192.3, 192.475, 192.485, and 192.607). We appreciate the comments on NAPSRS recommendations that were not related to NPRM proposals. They will help us decide appropriate responses to those recommendations in an action separate from this rulemaking.

Small Gas Systems.

The NPRM invited comments on the idea of whether RSPA should develop separate, more appropriate safety standards for small gas distribution systems. Such systems include master meter systems and petroleum gas systems serving mobile home or apartment complexes.

Although TPSSC did not address this matter, RSPA received comments from two pipeline operators, one state agency, and one mobile home association. The state agency said that it is not clear that separate regulations are required. This commenter suggested that a less complicated remedy might be to excerpt those portions of the regulations specifically applicable to small operators (deleting, for example, sections applicable to transmission lines) and publish the result as a guide or as instructional material.

Three commenters supported the need for more appropriate standards for small gas distribution systems. A mobile home association endorsed the idea of developing standards for small gas

distribution systems, such as master-meter systems serving mobile home parks, and publishing the standards as a new part of title 49 of the Code of Federal Regulations. The mobile home association commented that if it were not for the Guidance Manual for Operators of Small Gas Systems published by RSPA, the average mobile home park operator would have difficulty determining which regulations in part 192 apply to master-meter systems.

RSPA believes that each of the suggestions has merit and will be useful in developing future pipeline safety agendas.

Section 192.1, Scope of part.

Section 192.1(b)(1) excepts from the scope of part 192 certain gathering lines on the outer continental shelf (OCS), but does not except similar gathering lines located in State offshore waters. Section 192.1(b)(1) reads as follows: "This part does not apply to [o]ffshore gathering of gas upstream from the outlet flange of each facility on the outer continental shelf where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream." Because RSPA treats OCS and State offshore gathering alike under part 192, we proposed to delete the phrase "on the outer continental shelf" so the exception would cover offshore gathering no matter where located. We also proposed to replace "offshore gathering of gas" with "offshore pipelines," recognizing that the excepted pipelines may be either production or gathering lines.

Twelve TPSSC members voted for the proposal, two supported it but recommended a change, one member opposed it, and one abstained. The recommended change was that "gathering of gas" should be retained in §192.1(b)(1), since proposed §192.9 refers to gathering under §192.1.

We did not adopt the TPSSC minority's recommended change because the excepted pipelines located upstream from the referenced offshore facilities may be either production lines or gathering lines. Also, the term "offshore pipelines" was used in a similar revision of 49 CFR 195.1(b)(5) that we made to clarify the jurisdiction of the hazardous liquid pipeline regulations over offshore pipelines (Docket PS-127; 59 FR 33388; June 28, 1994). As discussed below under the §192.9 heading, §192.9 has already been revised to cross-reference §192.1. Since the cross-reference does not refer specifically to gathering lines, deleting the words "gathering of gas" from §192.1(b)(1) should not hinder the understanding of §192.9.

RSPA received 14 comments on the proposed rule change, nine from operators, four from pipeline-related associations, and one from a state agency. None of these comments opposed the proposal to change §192.1(b)(1).
Section 192.3, Definitions.

1. Petroleum Gas. A revised definition of "petroleum gas" is discussed below under the §192.11 heading.

2. Secretary. The proposed revision of the definition of "Secretary" is no longer needed. Because the term "Secretary" is not used in part 192, the definition of "Secretary" was removed from §192.3 in an earlier rulemaking (59 FR 17281; April 12, 1994).

3. Transmission Line. A longstanding RSPA interpretation holds that the definition of "transmission line" in §192.3 encompasses lines that link gathering lines or transmission lines to large volume customers, such as factories or power plants. This interpretation was founded on the definition of "transmission line" in the 1968 edition of the American Society of Mechanical Engineers [ASME] B31.8 Code. This code, which was the cornerstone of part 192, defined transmission to end at large volume customers. RSPA proposed to codify the interpretation by restating the definition of "transmission line" under part 192 to include a "large volume customer" as an end point of transmission.

Eleven TPSSC members voted for the proposal, three supported it with a recommended change, and one abstained. The members who recommended a change thought that RSPA should define "large volume customer." As discussed further below, the final definition includes an explanation of this term.

Twenty-six entities commented on the NPRM proposal, including 19 pipeline operators, five pipeline-related associations, one state agency, and one industrial consumer. Of these commenters, only eight expressed unqualified support. Three commenters completely opposed the proposal, saying it was not needed or would create confusion.

RSPA continues to believe that the proposed change is needed. The present definition does not reflect RSPA's interpretation that the term "transmission line" includes pipelines that connect large volume customers to gathering or transmission lines.

Nine commenters thought the proposed definition would reclassify as transmission those pipelines that connect large volume customers to high pressure distribution lines. RSPA did not intend for the proposed change to alter the classification of distribution lines that supply large volume customers. To avoid this unintended outcome, the definition explicitly does not include lines serving large volume customers downstream from a distribution center.

Four commenters said that the volume of gas transported is not an appropriate indicator of transmission. This group suggested that engineering characteristics, such as high pressure, stress level, or connection to a pressure limiting station are more indicative of transmission than the volume of gas transported. However, the purpose of the transmission proposal was not to open discussion on whether volume is an appropriate indicator of transmission. The purpose was to recognize that, by interpretation of the present definition, volume already is an established indicator of transmission, and that the interpretation should be codified. None of the commenters challenged the correctness of the interpretation. Moreover, before publishing the proposed definition, we referred to the 1992 edition of the ASME B31.8 Code, a widely recognized code of voluntary standards for gas piping. Section 803.21 of the ASME B31.8 Code (1992 edition) defined "transmission line" as "pipe installed for the purpose of transmitting gas from a source or sources of supply to one or more distribution centers or to one or more large volume customers" (emphasis added). And this definition is the same in the current 1995 edition of the code. Given our longstanding interpretation and the ASME B31.8 Code definition, we find it reasonable to add "large volume customer" to the definition of transmission line as proposed.

Three commenters wanted RSPA to define "large volume customer." We agree that an explanation of "large volume customer" would make the final definition more precise. Thus, we added a statement to the final definition to explain that "large volume customer" includes factories, power plants, and institutional users of gas.

We did not specify a minimum volume of gas a pipeline must transport to a customer to qualify as transmission. Volumes vary, and setting an arbitrary threshold might unfairly reclassify some existing lines. However, since "large volume customer" and "distribution center" each mark the end of transmission under the definition, operators may use the volume of gas supplied to distribution centers as a guide to identifying large volume customers.

The NAPS report recommended changing the part 192 definition of "transmission line" so that pipelines beginning at gathering or transmission lines and ending at "distribution systems and other load centers" would be classified as transmission lines. Under this alternative wording, load centers conceivably would include large volume customers.

Most of the persons who commented directly on this NAPS recommendation opposed it. A primary objection was that the recommended definition would needlessly reclassify as transmission low stress pipelines between communities or between distribution systems and high pressure transmission lines. In this regard, many commenters felt transmission should be limited to pipelines that operate at 20 percent or more of specified minimum yield strength (SMYS) of pipe, one of the characteristics

under the present definition. The lack of definition of the term "load center" was another frequently stated reason for opposing the NAPSIR recommendation. Commenters argued that introducing this term into the definition would lead to more, not less, confusion. Also several commenters thought the definition of transmission line should remain unchanged until RSPA completes its project to redefine the term "gathering line," which appears in the transmission line definition. After considering these concerns, we agree that the NAPSIR recommendation would not strengthen the present definition and could cause reclassification of many lines. Therefore, we did not adopt the recommendation in the final definition.

Section 192.5, Class locations.

RSPA proposed to clarify §192.5 to minimize the possibility that a pipeline is classified higher than required. Inasmuch as part 192 regulations become more stringent as pipeline classification increases, any over-classification results in needless expenditures.

Fourteen TPSSC members voted for the proposal and one abstained. Eight operators and one pipeline-related association commented on the proposed change. While these commenters generally supported the need to clarify §192.5, two operators suggested alternative wording. Based on one suggestion, RSPA has combined proposed §§192.5(c)(2) and (c)(3) into final §192.5(c)(2).

One focus of the NPRM was the cluster exception in existing §§192.5(f)(2) and (f)(3). This exception provides that if a cluster of buildings intended for human occupancy requires a Class 2 or 3 location, the classification ends 220 yards from the nearest building in the cluster, rather than at the end of the 1-mile class location unit that would otherwise be the basis for classification. In the NPRM (at 39573), we stated that adding buildings outside a cluster to those inside the cluster would result in over-classification of the class location unit. However, this statement was incorrect. The history of §192.5 (35 FR 13251; August 19, 1970) shows that the cluster exception applies only when all buildings in a 1-mile class location unit are in a single cluster. If a class location unit contains buildings outside a cluster or more than one cluster of buildings, all buildings in the unit must be counted to determine the classification of the unit. The final rule clarifies this point.

The association that commented thought we should define the term "cluster." However, the term is used in its ordinary dictionary sense, and, in RSPA's experience, has not been a significant source of misunderstanding.

Section 192.7, Incorporation by reference.

Section 192.7 describes the incorporation by reference in part 192 of documents or portions of documents relevant to gas pipeline safety. RSPA proposed to revise §192.7(a) to clarify that when a regulation in part 192 references a document, the entire document is not necessarily incorporated by reference. Rather, only those portions of the document that are specifically referenced in the regulation or are essential for compliance with the regulation are incorporated by reference. Such portions may or may not comprise the whole document, depending on the scope of the reference.

Fourteen TPSSC members voted for the proposal and one abstained. Commenters on the proposed change, seven operators and one pipeline-related association, all favored the proposal. However, two of these commenters wanted RSPA to change the rule in a manner not proposed. They advised changing §192.7 to require operators to follow the latest published editions of documents, instead of particular editions, which can become obsolete before RSPA updates the references. RSPA believes this recommended action is inappropriate because it would hand over an

established governmental function, rulemaking, to the private organizations who produce the referenced documents. Each newly published edition would automatically change a pipeline safety rule and bypass the Federal rulemaking process, which ensures fair treatment of all affected parties.

Section 192.9, Gathering Lines.

When the NPRM was published, §192.9 required gathering lines to comply with part 192 standards applicable to transmission lines without indicating that certain gathering lines are excepted from part 192 by §192.1. To highlight this exception and provide a clear understanding of which gathering lines must meet transmission line standards, we proposed to cross-reference §192.1 in §192.9.

Thirteen TPSSC members voted for the proposal and two abstained.

RSPA received seven comments on the proposed change, six from operators and one from a pipeline-related association. Only one commenter opposed the proposal, saying it did not see how the change would clarify the present rule.

Then in 1994, in a separate, unrelated action concerning the passage of pigs, RSPA revised §192.9 to include a cross-reference to §192.1 (59 FR 17281; April 12, 1994). Thus, §192.9 has already been changed consistent with the proposal in this proceeding, and no further action is necessary.

Section 192.11, Petroleum Gas Systems (Including Changes to §§192.1 and 192.3).

RSPA proposed several changes to the special rules in §192.11 for petroleum gas systems. First, we proposed to require that peak shaving plants supplying petroleum gas by pipeline to a natural gas distribution system as well as pipeline systems transporting only petroleum gas or petroleum gas/air mixtures comply with part 192 standards and the National Fire Protection Association (NFPA) Standards 58 and 59. Downstream from the point where a peak shaving plant injects petroleum gas into a natural gas distribution system, only part 192 would apply. Next, we proposed that the NFPA Standards prevail in the event of a conflict between part 192 and NFPA Standards 58 or 59. At the same time, we said that a conflict does not exist when NFPA Standards 58 and 59 are silent or nonspecific on a subject (such as for corrosion protection or leak detection). In this case, the operator would have to comply with any applicable part 192 rule. Finally, we proposed to add a definition of "petroleum gas" to §192.3, and to clarify under §192.1(b)(4) which petroleum gas systems are excepted from part 192.

Ten TPSSC members voted for the proposal, one member supported it with a recommended change, three members opposed it, and one abstained. Two TPSSC members disagreed with the proposal that NFPA standards should prevail in the event of a conflict with part 192. One TPSSC member voted yes, but recommended that in the event of conflict the most stringent requirement should prevail.

We explained in the NPRM why we believe the NFPA standards should have priority in direct conflict situations. The main reason is that in contrast to part 192, the NFPA Standards specifically cover petroleum gas transportation. Also, NFPA Standards 58 and 59 reflect current petroleum gas technology and safety practices. Given this special attention to petroleum gas, we do not think there is sufficient reason to require operators to follow part 192 instead of the NFPA Standards in the event of conflict, even if part 192 is more stringent.

RSPA received eight comments in favor and three comments in opposition to the proposed changes to §192.11. Those commenters who opposed the proposal were concerned that compliance with NFPA Standards 58 and 59 would involve significant capital expenditures. However, §192.11 already requires petroleum gas systems to meet NFPA Standards 58 and 59. And, in accordance with 49 U.S.C. §60104(b), none of the design, installation, construction, initial testing, or initial inspection requirements of NFPA Standards 58 and 59 would apply under part 192 to peak shaving plants now in

existence. So, retrofitting existing plants would not be required. Although all plants would have to comply with the operation and maintenance requirements of NFPA Standards 58 and 59, overall compliance costs should be small because, as NFPA stated in its petition, most, if not all, existing plants already comply with NFPA Standards 58 and 59 to qualify for insurance coverage. Thus, §192.11 is revised as proposed in the NPRM.

Proposed §192.1(b)(4)(i) would exclude from part 192 pipeline systems that transport only petroleum gas or petroleum gas/air mixtures to fewer than 10 customers, if no portion of the system is located in a public place. This exclusion is in the present §192.11(a), but in proposing to relocate it to §192.1(b)(4)(i), we omitted the parenthetical phrase "(such as a highway)." One commenter objected to the omission, saying it would leave the meaning of "public place" open to interpretation. However, our experience has been that the parenthetical phrase has hindered more than helped the understanding of public place. We have consistently interpreted "public place" to mean a place which is generally open to all persons in a community as opposed to being restricted to specific persons. We consider churches, schools, and commercial property as well as any publicly owned right-of-way or property which is frequented by persons to be public places. Although §192.11(a) refers to a highway as an example of a public place, many operators have incorrectly considered the example to restrict, rather than define, the coverage of petroleum gas systems with fewer than 10 customers.

Proposed §192.1(b)(4)(ii) would clarify that part 192 does not apply to single-tank, single-customer petroleum gas systems located entirely on the customer's premises, but partially in a public place. These systems exist, for example, at churches or restaurants, where the gas is used for heating or cooking. The proposal was based on the jurisdiction of part 192 over the distribution of gas. As indicated by the definition of "service line" (§192.3), part 192 does not apply to gas distribution beyond the point where metered gas enters customer piping. For single-tank, single-customer systems on the customer's premises, this point normally occurs at the tank.

Three commenters protested that part 192 would still apply to single-customer, multi-tank systems on the customer's premises, regardless of tank size. For example, the proposed rule would not exclude a two-tank system partly in a public place, even if the total quantity of stored gas is less than in a large single-tank system. Because the proposed exclusion did not rest on the quantity of gas delivered to the customer, we agree that the number of tanks should not be a factor in the exclusion of single-customer systems on the customer's premises. Therefore, final §192.1(b)(4)(ii) omits the term "single-tank."

The proposed definition of "petroleum gas" drew no objections from either the TPSSC or commenters. So the definition is adopted as proposed.

Sections 192.14 and 192.553, Conversion and Upgrading

If a steel pipeline to be converted to gas service under part 192 has not been designed and constructed to meet part 192 standards, it must be converted according to §192.14 (§192.13(a)(2)). Section 192.14(a)(4) requires that each pipeline must be pressure tested under subpart J of part 192 to substantiate the maximum allowable operating pressure (MAOP) permitted by subpart L of part 192. Under subpart L, to compute the MAOP of a pipeline being converted, an operator must determine the design pressure of the weakest element of the pipeline (§192.619(a)(1)).

Design pressure is also a factor under §192.553, which establishes general requirements for increasing any pipeline's MAOP (upgrading). Under §192.553(d), an increased maximum allowable operating pressure may not exceed the MAOP part 192 allows for a new pipeline constructed of the same materials in the same location. Thus, to upgrade a pipeline within this MAOP limit, an operator must determine the design pressure of the weakest element of the pipeline (§192.619(a)(1)).

Because of the role of design pressure, a steel pipeline may not be converted or upgraded when

any of the pipe characteristics needed to calculate design pressure under §192.105 is unknown. Therefore, RSPA proposed to amend §§192.14(a)(1) and 192.553(d) to permit the conversion or uprating of steel pipelines based on an approach found in paragraph 845.214 and Appendix N of the ASME B31.8 Code. Under the proposal, when design pressure is unknown, operators would have to pressure test the pipeline under Appendix N until pipe yield occurs. The first pressure that produces pipe yield, reduced by 20 percent and the appropriate factor under §192.619(a)(2)(ii), would be used instead of design pressure to calculate MAOP.

Twelve TPSSC members voted for the proposed revision of §192.14, one member supported it with a recommended change, one member opposed it but suggested changes, and one member abstained. Eleven members voted for the proposal regarding §192.553, two supported it with a recommended change, one opposed it, and one abstained. The recommended changes were to make yield testing mandatory instead of permissive, and to allow yield testing that is based on other than the "first pressure" that produces yield, since Appendix N does not use that term. The reasons against the proposal were that yield testing appeared to be mandatory, and use of the Appendix N method should be discretionary.

RSPA has adopted the recommended change regarding mandatory yield testing. Although, in the proposed rules, yield testing may have appeared permissive, RSPA clearly intended such testing to be the only alternative when design pressure is unknown. Therefore, in the final rule, if factors in the design formula are unknown, a pipeline to be converted or uprated would have to be pressure tested under Appendix N to determine pipe yield, except as discussed below for low-stress pipe.

The TPSSC member's recommendation to delete "first pressure" from the proposed rule was not adopted. Although Appendix N does not refer to the first pressure that produces yield, paragraph 845.214(a)(2) of the ASME B31.8 Code, which applies to the establishment of MAOP when design pressure is unknown, provides that only the first test to yield can be used to determine MAOP. The proposed rules were consistent with this B31.8 standard, which precludes the use of higher yield pressures that can result from successive testing.

RSPA did not adopt the TPSSC member's comment that use of the Appendix N method should be discretionary. When MAOP is determined without knowing the pipeline's design pressure, conformity to a standardized practice (Section N5.0 of Appendix N) assures additional safety to offset the lack of knowledge about design pressure.

RSPA received comments on the proposed rules from 11 operators and three pipeline-related associations. Four operators and one pipeline-related association recommended removal of the proposed requirement to use the "first pressure" that produces yield. Our position on this subject is given above in response to a similar comment by a TPSSC member.

One operator and one pipeline-related association suggested locating the proposed amendments in §192.105 instead of §§192.14 and 192.553. RSPA did not adopt this suggestion because §192.105 affects the design of new pipelines, a subject the proposed rules did not address.

One operator and two pipeline-related associations argued that pressure testing to yield is unnecessary to qualify low-stress distribution lines (generally lines 123/4 inches or less in nominal outside diameter operating at pressures less than 200 psig) for conversion or uprating. Part 192 recognizes that low-stress pipelines present a much lower risk to public safety than high-stress lines, all other factors being equal. For example, certain welding standards in subpart E are less stringent for pipelines to be operated below 20 percent of SMYS. Because of the lower risk, the final rule provides that pipelines 123/4 inches or less in nominal outside diameter to be operated at a pressure less than 200 psig may be converted or uprated without testing to yield. The MAOP of such pipelines may be determined under §192.619(a)(1) by using 200 psig as design pressure.

An operator argued that pressure testing to yield should be discretionary, because sufficient safety would be provided by the proposed pressure reduction factors regardless of the level of test

pressure. The commenter was also concerned that pressure testing to yield for an extended time could cause the growth of defects that later cause failure during operation. Two hours was suggested as the optimum hold time for yield testing, based on ongoing studies.

RSPA did not adopt these comments. Pressure testing to yield exposes more material and construction defects than does testing to a lower pressure. With fewer defects remaining after testing to yield, greater long-term protection against failures due to the growth of unexposed defects results. RSPA intended this extra protection, combined with the proposed pressure reduction factors, to offset the absence of design pressure as a limit on MAOP. Pressure testing to yield appears to be reasonable since many operators already strength test their pipelines at or above yield for safety and efficiency reasons. Also, none of the other commenters or TPSSC members objected to pressure testing to yield, except as discussed above for low-stress lines. As to the optimum hold period for yield testing, because the matter is still being studied by industry and is not addressed by the procedure for yield testing under Appendix N, it is too soon to consider establishing a special hold period for yield testing under part 192.

The final rules have been drafted to improve clarity, to show their relation to design pressure and MAOP under §192.619, and to include the changes discussed above. The proposed amendments to §§192.14(a)(1) and 192.553(d) are revised and published as an amendment to §192.619(a)(1), because this section deals specifically with design pressure and MAOP. Final §192.619(a)(1), set forth below, provides that when design pressure is unknown for steel pipelines being converted or uprated, a reduced value of first yield hydrostatic test pressure, instead of design pressure, is used to compute MAOP. As discussed below, final §192.619(a)(1) does not include the reduction factors proposed for butt and lap welded pipe under §192.14(a)(1)(ii). If the pipeline to be converted is 12 3/4 inches or less in nominal outside diameter, 200 psig, instead of design pressure, may be used if the line is not yield tested. Section 192.553(d) is also revised to refer to amended §192.619(a)(1). Also, because the 1992 edition of the ASME B31.8 Code is now out-of-print, the 1995 edition is referenced in §192.619(a)(1) as shown by the revisions to Appendix A of part 192 (see below).

Section 192.107, Yield Strength (S) for Steel Pipe.

For pipe made according to a specification not listed in part 192 or whose specification or tensile properties are unknown, §192.107(b)(1) provides that yield strength may be established by tensile testing in accordance with section II-D of appendix B to part 192. When yield strength is determined by such tensile testing, paragraph (b)(1) requires that the yield strength used in the design formula of §192.105 be the lower of either 80 percent of the average yield strength determined by tensile testing or the lowest yield strength determined by tensile testing, but not over 52,000 psi. RSPA proposed to remove this 52,000 psi upper limit on yield strength, because higher strength pipe has become available since this limitation was adopted, and tensile testing is a generally accepted method of determining material properties.

Twelve TPSSC members voted for the proposal, one member supported it with a recommended change and two abstained. The member recommending the change felt that the proposal would be better justified if we knew the proportion of higher strength pipe that lacks tensile documentation and why this information is unknown. RSPA believes this information is not essential in deciding whether to adopt the proposal because the proposed amendment has limited application. We expect operators would use the proposed amendment to qualify stock pipe they have stored for maintenance and emergencies and to qualify used pipe being reclaimed. In either case, the amount of pipe that would be qualified under proposed §192.107(b)(1)(ii) should be very small compared with all pipe being qualified for use in gas pipeline systems.

RSPA received six comments on the proposed amendment. The comments came from five operators and one pipeline-related association, and all supported the proposal. In addition, one operator

recommended that RSPA further amend §192.107 to permit the use of recognized statistical methods to determine yield strength from tensile tests. RSPA did not adopt this comment because this concept was not addressed in the NPRM and would require further public comment and study.

Accordingly, §192.107 is amended as proposed in the NPRM.

Section 192.121, Design of Plastic Pipe.

RSPA proposed to add the following formula to §192.121, which would allow use of the Standard Dimension Ratio (SDR) in determining design pressure for plastic pipe:

$$P = \frac{2S}{(SDR - 1)} 0.32$$

SDR is a commonly used plastic pipe characteristic in the gas pipeline industry.

Thirteen TPSSC members voted for the proposal and two abstained.

RSPA received eight responses from the public, all in favor of the proposed rule. Therefore, the final rule is issued as proposed in the NPRM, except that the proposed definition is reworded to conform to standard usage. The final definition agrees with the SDR definition given in the voluntary standard referenced in part 192 for the manufacture of thermoplastic pipe: American Society for Testing and Materials (ASTM) Designation D 2513, "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings" (1990c edition).

Section 192.123, Design Limitations for Plastic Pipe.

Under §192.123, plastic pipe may not be used where pipe operating temperatures are below -20°F. RSPA proposed to lower this limit to -40°F in light of improvements in pipe technology. Additionally, RSPA proposed to clarify §192.123(b)(2), which sets the maximum operating temperature for thermoplastic pipe and reinforced thermosetting plastic pipe.

Thirteen TPSSC members voted for the proposal and two abstained.

RSPA received nine comments on the proposed rule changes: six from operators, one from a pipeline-related association, and two from manufacturers. The operators and the association supported the proposal or did not object to it. However, the manufacturers opposed the proposal stating that many components other than pipe that are made for use in gas pipeline systems do not have a low temperature rating of 40°F, although they perform satisfactorily at 20°F. One of these commenters argued that unsafe operation could occur if pipeline designers assumed that all components, such as repair and connection devices, fittings, valves, meters, and regulators, may be used at 40°F.

RSPA shares the manufacturers' concern. Therefore, the final rule allows the use of plastic pipe at temperatures between 20°F and -40°F only if all pipe and pipeline components whose operating temperature will be below 20°F have a manufacturer's temperature rating consistent with that operating temperature.

Section 192.179, Transmission Line Valves.

Gas transmission lines must have sectionalizing block valves spaced according to population density under §192.179(a). RSPA proposed to revise this rule to allow the RSPA Administrator to approve alternative spacing where the operator demonstrates an equivalent level of pipeline safety.

Thirteen TPSSC members voted for the proposal, one against, and one abstained.

RSPA received comments from 12 operators, two pipeline-related associations, and a state agency. Thirteen commenters gave their full or qualified approval, but one association and the state

agency argued against the proposal. Those commenters expressing qualified support generally felt that the proposal offered some benefit to pipeline operators. However, they urged that operators be permitted to determine spacing based on criteria similar to those for hazardous liquid pipelines in 49 CFR 195.260(c).

RSPA did not adopt the comment that transmission line valve spacing should be governed by criteria similar to those in 49 CFR 195.260(c). While those criteria may be appropriate for hazardous liquid pipelines, we have no indication they are suitable for gas transmission lines. In fact, the widely accepted voluntary standard for valve spacing, paragraph 846.11 of the ASME B31.8 Code, differs little from existing §192.179.

As for the comments opposing the proposal, RSPA has considered the state agency's concern that the proposed rule would infringe on the authority of state agencies to grant waivers from §192.179 for intrastate transmission lines. (See 49 U.S.C. §60118(d)). However, this concern has been addressed by a procedural rule (49 CFR 190.9) that RSPA adopted to handle petitions for finding or approval under the federal pipeline safety regulations. Under this rule, which would apply to petitions for alternative spacing under §192.179, operators of intrastate pipelines subject to the safety regulatory jurisdiction of a certified state agency must submit their petitions to that agency for review and recommendation before final action by the Administrator.

RSPA does not agree with the pipeline-related association's suggestion that since the underlying rule is not justified, the proposed amendment is not needed. The basis for existing §192.179 was the 1968 edition of the ASME B31.8 Code. As noted above, the current edition of that code continues to specify valve spacing similar to §192.179.

Section 192.203, Instrument, Control, and Sampling Pipe and Components.

Under §192.203(b)(2), each takeoff line must have a shutoff valve as near as practicable to the point of takeoff. RSPA proposed an exception for takeoff lines on pressure regulators when the lines can be isolated by other valves from their source of pressure.

Eleven TPSSC members voted for the proposal, one voted against it, two members supported it with a recommended change, and one abstained. The two members recommended that we also except instrument control lines that are capable of being isolated from their source of pressure.

Although the industry's use of isolatable regulators gave rise to the proposed rule change, isolation of a takeoff line from its pressure sources applies to any takeoff line capable of such isolation, not just takeoff lines on regulators. Therefore, the final rule excepts any takeoff line capable of being isolated from its sources of pressure. Thus, the term "takeoff line" includes instrument control lines that are designed as takeoff lines.

RSPA received 13 public comments, all in favor of changing the regulation. One of these commenters offered a rewording intended to broaden the regulation to include control lines at both measuring and regulating stations. As explained above, such control lines will be covered by the exception when they are takeoff lines capable of isolation from their sources of pressure.

Section 192.227, Qualification of Welders, and §192.229, Limitations on Welders. Welders qualified to weld on pipe to be operated at any hoop stress (§192.227(a)) must requalify every 6 months (§192.229(c)). However, welders qualified to weld only on pipe to be operated at low hoop stress (less than 20 percent of SMYS) need only requalify once a year (§192.227(b)), and the requalification requirements are less comprehensive than those for other welders.

RSPA proposed to revise §§192.227 and 192.229 to allow welders initially qualified for any hoop stress level, but who weld only on pipe to be operated at low hoop stress, to requalify under the low-stress requirements. Such welders would then not be permitted to weld on pipe to be operated at 20

percent or more of SMYS unless they again qualify under §192.227(a).

Twelve TPSSC members voted for and one against the proposed revision of §192.227, and two abstained. The TPSSC members' vote on §192.229 was the same as on §192.227. Eight pipeline operators and two pipeline-related associations also agreed with the proposal.

A commenter suggested that the final rule make clear that either existing §192.229(c) or §192.227(b) can be used to requalify welders to weld on pipe to be operated at less than 20 percent of SMYS. RSPA adopted the substance of this comment by adding a sentence concerning low stress requalification to the final §192.229(c).

The commenter who opposed the proposal claimed that qualification under §§192.227(a) and (b) is inadequate. However, RSPA finds no justification for this claim. Section 192.227 became effective in February 1970. Our accident data in the intervening 26 years have not indicated that field welding of steel materials in pipelines presents a significant safety problem.

In the final rules, proposed §192.227(c) is redesignated as §192.229(d). Thus, all requalification requirements appear in one section.

Section 192.241, Inspection and Test of Welds.

Section 192.241 requires inspection and test of welds on steel materials in pipelines, except welds made during the manufacture of pipe and pipeline components. Under existing §192.241(c) and appendix A to part 192, the acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in section 6 of API Standard 1104 (17th edition).

The Appendix of API Standard 1104, which is based on fracture mechanics principles, provides more detailed acceptance standards for weld flaws than the criteria in section 6 of API Standard 1104. RSPA proposed to amend §192.241(c) to permit use of the Appendix as an alternative acceptance standard for girth weld flaws, except welds unacceptable because of a crack.

Eleven TPSSC members voted for the proposal, three members supported it with a recommended change and one abstained. The three members suggested that the word "flaw" be changed to "defect".

In existing §192.241, neither the word "flaw" nor "defect" is used. The rule is written in terms of weld acceptability. Therefore, in response to the comments of the TPSSC members, the final rule is written without using either "flaw" or "defect."

Eleven pipeline operators and three pipeline-related associations agreed with the proposed change. Only one commenter was opposed to allowing use of the Appendix of API Standard 1104. This commenter was concerned that industry inspection personnel may not be qualified to apply the complicated engineering criteria found in the Appendix. On the contrary, personnel who would use the Appendix must be able to apply it correctly. Under §§192.243(b) and (c), operators must ensure that nondestructive testing is performed in accordance with written procedures by persons who have been properly trained and qualified.

The final rule indicates that use of the Appendix is restricted to girth welds to which the Appendix applies. For example, as Section A.1 of the Appendix provides, welds used to connect fittings and valves are not covered. Also, the Appendix applies only to girth welds between pipe of equal nominal wall thickness.

Section 192.243, Nondestructive Testing.

For pipelines subject to nondestructive testing under part 192, §192.243(d)(4) requires such testing for all field butt welds at pipeline tie-ins. RSPA proposed to amend §192.243(d)(4) to add the phrase "including tie-ins of replacement sections." This change was meant to clarify that tie-ins occur

in pipeline replacement, as well as in new construction.

Fourteen TPSSC members voted for the proposal and one abstained.

Comments were received from five pipeline operators and one pipeline-related association, and all favored the proposed rule change. Section 192.243 is amended as proposed in the NPRM.

Section 192.281, Plastic Pipe.

This rule establishes standards governing the joining of plastic pipe. RSPA proposed to revise §192.281(c), which applies to heat-fusion joints, to cover electrofusion, a method of heat-fusion joining. The proposal was that electrofusion joints must be made with equipment and techniques expressly prescribed by the fittings manufacturer.

Thirteen TPSSC members voted for the proposal, one member supported it with a recommended change, and one abstained. The recommended change was that "or the equivalent" be added so that operators could use equipment and techniques equivalent to that prescribed by fittings manufacturers.

RSPA received 15 comments on the proposed change to §192.281(c). Eleven commenters fully or partially agreed with the proposed rule, while four commenters objected. A commenter who partially agreed recommended that electrofusion be specifically addressed in §192.285. However, RSPA finds that step unnecessary because electrofusion is a type of heat fusion, and heat fusion is covered by §192.285(b)(2).

The objections focused on RSPA's proposal that operators must use "equipment and techniques expressly prescribed by the fittings manufacturer." One commenter said that electrofusion equipment is expensive and that most electrofusion fittings can be installed only by using the fittings manufacturer's equipment. As a result, most operators have only a single source of electrofusion fittings. However, the commenter stated that electrofusion equipment under development will allow the installation of several different brands of electrofusion fittings, and that those additional sources would encourage competitive pricing. Other operators argued they should not be denied the use of procedures and equipment not expressly prescribed by the fittings manufacturer, as long as the procedures are qualified for use under §192.283.

Since the proposal was intended to relax the current regulatory requirement, RSPA accepts the recommendations that operators should have latitude in choosing equipment and techniques for use in electrofusion joining. We have adopted a slight revision of the wording proposed by three pipeline operators and one pipeline-related association. This wording meets the "or the equivalent" recommendation made by the TPSSC member. Additionally, this wording responds to the commenter's concern that the proposed wording would deter competitive pricing. The adopted wording requires that the joints be joined using equipment and techniques of the fittings manufacturer or equipment and techniques shown, by testing to certain criteria of ASTM Designation F1055, "Standard Specification for Electrofusion Type Polyethylene Fittings for Outside Diameter Controlled Polyethylene Pipe and Tubing," to be at least equivalent to those of the fittings manufacturer. The ASTM criteria are those adopted under the next heading for qualifying electrofusion joining procedures.

Section 192.283, Plastic Pipe: Qualifying Joining Procedures.

Section 192.283 prescribes criteria for qualifying procedures used to join plastic pipe. RSPA proposed to amend this section by adding more appropriate criteria for procedures used to join polyethylene plastic pipe by electrofusion. The proposed criteria are contained in certain sections of ASTM Designation F1055 (1987 edition).

Fourteen TPSSC members voted for the proposal and one member abstained.

RSPA received eight comments on the proposal: seven from pipeline operators and one from a

pipeline-related association. Seven commenters supported the proposal. But one opposed it, saying that the proposal should be withdrawn or rewritten to accept any procedure that demonstrates a suitable quality of joint. We believe, however, that allowing operators to judge the quality of an electrofusion joint without applying a recognized safety standard would be unacceptable. Because of the failure risk of plastic pipe joints, the present rule requires heat fusion joining methods to be qualified under generally recognized voluntary standards, ASTM D2513 and ASTM D2517. In the absence of safety data to the contrary, as a heat fusion method, electrofusion procedures should likewise be qualified under an appropriate recognized standard. Accordingly, proposed §192.283(a)(iii) is adopted as final. However, the proposed reference to the 1987 edition of ASTM Designation F1055 is updated to the 1995 edition, as shown by the revisions to Appendix A of part 192 (see below). And the referenced title of paragraph 9.4 is corrected to read "Joint Integrity Tests."

Sections 192.317(a), Protection from Hazards.

This section requires that gas transmission lines and mains be protected from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or sustain abnormal loads. Additionally, offshore pipelines must be protected from damage by mud slides, water currents, hurricanes, ship anchors, and fishing operations. RSPA recognized that in areas susceptible to these hazards, such as offshore pipelines in areas where hurricanes usually pass, complete protection against the hazards may not be feasible. We, therefore, proposed to change the regulation to require that in construction of transmission lines and mains, operators "take all practicable steps to protect" the pipeline against the cited hazards.

Eleven TPSSC members voted for the proposal, one member supported it with a recommended change, two members were opposed and one member abstained. The two members who opposed it said that "all practicable steps to protect" would be difficult to interpret.

Comments were received from seven pipeline operators and two pipeline-related associations. All commenters gave their full or qualified approval.

RSPA has issued the final rule as proposed in the NPRM. The "all practicable steps to protect" wording was left in the rule to allow operators flexibility in compliance; any tightening of this performance wording would diminish that flexibility. RSPA will interpret or apply the rule in light of customary pipeline design and construction practices in the industry.

§§192.319(c) and 192.327(e), Offshore Pipe in the Gulf of Mexico and Its Inlets.

Under §192.612, operators had to inspect gas pipelines in the Gulf of Mexico and its inlets in waters up to 15 feet deep. If the pipelines were found exposed or to be a hazard to navigation (i.e., buried less than 12 inches below the seabed), the operator had to bury them to a depth of 36 inches in soil or 18 inches in rock.

The part 192 review disclosed that §§192.319(c) and 192.327(e), which govern the installation of pipe offshore, are incompatible with the objectives of §192.612. In water between 12 and 200 feet deep, §192.319(c) permits pipe to be installed at or above the natural bottom. And in water less than 12 feet deep, in certain circumstances §192.327(e) permits pipe to be buried less than 36 inches in soil or 18 inches in rock. RSPA proposed to amend §§192.319(c) and 192.327(e) to require that when pipe is installed offshore in the Gulf of Mexico and its inlets, the pipe must be installed consistent with the burial standards of §192.612.

Thirteen TPSSC members voted for the proposal, one member supported it with a recommended change, and one abstained. One member supported the proposal but recommended rewording and rearrangement for clarity, and that §192.319(c) be moved to §192.327.

Seven operators and four pipeline-related associations supported the proposed changes to §§192.319(c) and 192.327(e). However, five commenters recommended wording changes and rearrangement for clarity, and five commenters suggested that §192.319(c) be moved to §192.327. In light of the recommendations, RSPA has clarified the final rule text, as set forth below.

One pipeline-related association opposed the proposal. It maintained that pipe installed in water between 12 and 15 feet deep with less than 12 inches of cover (now acceptable under §192.319(c) but not §192.612) might not be an actual hazard to navigation. But the proposal concerned the inconsistency of §192.612 with other pipeline safety rules, a problem that can be resolved without reopening the question of what is a "hazard to navigation" in the Gulf of Mexico and its inlets. A "hazard to navigation" is defined in §192.3 to mean "a pipeline where the top of the pipe is less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water." This definition was adopted in the proceeding on §192.612 (Docket No. PS-120). Any remaining controversy over the definition may be raised by submitting a petition for rulemaking under 49 CFR part 106.

Section 192.321, Installation of Plastic Pipe; and §192.375, Service Lines: Plastic.

Section 192.321(a) requires that plastic pipe be installed below ground level. RSPA proposed to allow the temporary use of uncased (i.e., not encased) plastic pipe above ground level under certain conditions. The proposed conditions limited the use to (1) 30 days; (2) locations where the pipe is unlikely to be damaged (or is protected from damage) by external forces; (3) pipe that is resistant to the exposure to ultraviolet light and temperature extremes; and (4) pipe that has not been previously used above ground level.

Nine TPSSC members voted for the proposal, one against, three members supported it with a recommended change, and two abstained. The recommended changes were similar to those made by the commenters as discussed below.

RSPA received 18 comments on this proposal. Each commenter agreed partially with the proposed rule. Some commenters said the current rule should be amended to permit the permanent use of plastic above ground when the pipe is encased in steel conduit. However, since the proposal concerned only temporary usage, this comment was not adopted in the final rule.

Many commenters argued that the 30-day period would be too brief. They suggested a longer period, such as 60 or 90 days, in view of the time it may take to complete a permanent installation. They cited the time associated with planning, obtaining governmental permits, acquiring easements, engaging contractors, competing work demands, and other unforeseen events. Several commenters suggested that no specific time limit be defined and that performance language be used.

Commenters also maintained that the proposed prohibition against the subsequent reuse of plastic pipe above ground level is not justified, since commercially available plastic pipe can be exposed to ultraviolet light for at least 2 years with no degradation of its properties. These commenters argued that the rule should permit reuse of plastic pipe provided such use does not exceed the pipe manufacturer's exposure limits.

RSPA agrees that in most cases 30 days may not be enough time for operators to take full advantage of a temporary aboveground plastic pipe installation. In a recent waiver of §192.321(a), we allowed the applicant to install plastic pipe above ground for a time that does not exceed the manufacturer's recommended maximum period of exposure (60 FR 55752; Nov. 2, 1995). Although commenters indicated that extending the limit to 2 years might not adversely affect pipeline safety, we are not certain 2 years would be safe for all plastic materials. Some pipe manufacturers may recommend less exposure time. Therefore, we have chosen the manufacturer's recommended maximum period of exposure but not longer than 2 years as the limit on the temporary use of plastic pipe above

ground. If a manufacturer has no recommended maximum exposure period, then the limit would be 2 years. RSPA does not believe a performance standard would provide a suitable time limit, because the safe service life of plastic pipe exposed above ground is too uncertain.

RSPA agrees that the final rule should not unduly hinder the use of plastic pipe. Thus, the proposed ban on reusing plastic pipe above ground level does not appear justified. The final rule permits cumulative aboveground use for the manufacturer's recommended maximum period of exposure but not longer than 2 years, provided the operator can demonstrate the cumulative time of aboveground use. In monitoring compliance, RSPA will consider credible evidence that demonstrates cumulative time of use, such as business records, work orders, or affidavits related to the pipe concerned.

RSPA recognized that the changes to §192.321 affected only plastic mains and transmission lines. However, the need for these changes applies as well to plastic service lines. As with transmission lines and mains, in some situations operators may be able to save material and construction costs of service lines located outside buildings by temporarily installing the lines above ground. Thus, §192.375(a), which requires that plastic service lines outside buildings be installed below ground, is revised to allow temporary aboveground installations in accordance with §192.321(g).

Section 192.455, External Corrosion Control: Buried or Submerged Pipelines Installed After July 31, 1971.

Under §192.455(a)(2), a pipeline must have a cathodic protection system designed to protect the pipeline in its entirety. RSPA proposed to remove the phrase "in its entirety" because it is unnecessary to convey the meaning of the rule, and some operators have incorrectly assumed that pipeline casings also must be protected.

In addition, §192.455(f)(1) exempts from corrosion control requirements certain metal fittings in plastic pipelines if the fitting is protected against corrosion by alloyage. RSPA recognized that the word "alloyage" is not in common usage and proposed its replacement with "alloy composition" to improve understanding.

Twelve TPSSC members voted for the proposal, two members supported it with a recommended change and one abstained. The two members recommended that in proposed paragraph (f)(1), the term "corrosion resistance" be replaced by "corrosion control," which is the term used in the existing rule and throughout subpart I. RSPA has made this replacement in the final rule.

Comments were received from six pipeline operators and one pipeline-related association. Six commenters gave their full approval and the seventh was noncommittal. Therefore, except for the previously discussed wording changes, §192.455 is adopted as proposed in the NPRM.

Section 192.475, Internal Corrosion Control: General.

Section 192.475(c) limits the hydrogen sulfide content of natural gas stored in pipe-type or bottle-type holders to 0.1 grain per 100 standard cubic feet of gas. An operator proposed that this rule be relaxed to allow a concentration of 0.25 grain per 100 standard cubic feet of gas. Because the 0.25 limit is within customary industry contract limits and is still lower than maximum allowable safe limits set by other government agencies, RSPA proposed to increase the allowable hydrogen sulfide limit in gas to be stored in pipe-type and bottle-type holders to 0.25 grain per 100 standard cubic feet of gas. This action would lower the cost of processing natural gas that contains small quantities of hydrogen sulfide.

Thirteen TPSSC members voted for the proposal, one against, and one member abstained

Seven commenters supported the proposed change. No commenters opposed the change. One state agency suggested that hydrogen sulfide levels be expressed in parts per million in addition to grains per 100 standard cubic feet of gas. The NAPS report also made this recommendation, and all comments on the subject were supportive. RSPA agrees the allowable level should be stated in parts per million and has included this designation in the final rule.

Section 192.485, Remedial Measures: Transmission Lines.

RSPA's review of §192.485, which prescribes remedial measures for corroded transmission lines, disclosed that many operators need guidance on how to determine the remaining strength of corroded pipe. RSPA proposed to provide this guidance by referencing ASME B31G Manual for Determining the Remaining Strength of Corroded Pipelines in a new §192.485(c).

Fourteen TPSSC members voted for the proposal and one member abstained.

Comments relevant to proposed §192.485(c) were received from 10 pipeline operators and two pipeline-related associations. Six commenters gave their full or partial support. Another six said the proposal was unnecessarily restrictive because it did not allow the use of other proven industry-developed methods for determining the remaining strength of corroded pipelines.

The most noteworthy method mentioned was the method in the American Gas Association (AGA) report for Project PR 3-805, "A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe," (December 22, 1989; AGA catalog No. L51609). Project PR 3-805 was undertaken to devise a criterion that, while still assuring adequate pipeline integrity, would eliminate, as much as possible, the excess conservatism embodied in the ASME B31G Manual. For a complex analysis, the modified criterion can be applied by using a computer program called RSTRENG, which is furnished with the report. The modified criterion can also be applied with a long-hand equation, or if a simplified analysis is preferred, with tables or curves.

Evaluating the strength of corroded pipe by procedures in ASME B31G or the associated AGA report is subject to the limitations specified in the procedures. For example, the procedures are not appropriate for determining the ability of pipe to withstand stresses other than stress from internal pressure. Thus, if corroded pipe is under significant secondary stress (e.g., bending stress), an additional method must be used to determine the pipe's remaining strength.

The NAPS report recommended amending §192.483 to require the use of appropriate guides, such as those published by ASME and the Gas Piping Technology Committee, whenever the remaining strength of corroded pipelines must be determined. The majority of commenters who addressed this NAPS recommendation opposed mandatory use of the guides. They said operators should retain the flexibility to decide when calculations under the guides are necessary. Even those commenters who supported the recommendation thought the rule should permit the use of other valid methods.

After considering the comments on proposed §192.485(c) and the NAPS recommendation, we believe the NAPS recommendation would be unduly restrictive. Operators are now free to use any valid method to determine the remaining strength of corroded pipe, and we see no compelling reason to restrain this flexibility. The NPRM simply proposed to reference guidance documents that are generally available for operators to use at their discretion. Moreover, the proposal was written in a permissive sense to assist, but not restrict, operator decision-making. So we have amended the regulation essentially as proposed, but referenced both ASME B31G and the AGA report, with RSTRENG, to expand the information provided.

Section 192.491, Corrosion Control Records.

Under §192.491(a), operators must maintain records or maps showing the location of

cathodically protected piping, cathodic protection facilities, other than unrecorded anodes installed before August 1, 1971, and neighboring structures bonded to the cathodic protection system. RSPA proposed to amend this requirement to relieve operators of the burden of making precise field measurements and preparing and maintaining records or maps showing the specific location of millions of individual anodes.

The TPSSC members voted unanimously for the proposal.

Comments on proposed §192.491(a) were received from six pipeline operators, two pipeline-related associations, and one state agency. Eight commenters expressed their full or partial support with one commenter opposed. RSPA has accepted the recommendation of two operators that in the second sentence of proposed paragraph (a), the phrase "Records and maps..." should, for consistency with the rest of this section, be changed to "Records or maps...."

Section 192.491(b)(2) requires that operators retain records of corrosion control tests, surveys, and inspections for "as long as the pipeline remains in service." RSPA proposed to reduce this retention period to at least 5 years for many records, because 5 years was thought to be adequate for compliance investigations and analysis of possible corrosion problems.

The proposal did not, however, extend to records under §§192.465(a) and (e) and 192.475(b). These records relate to tests and inspections to determine the adequacy of, or need for, external and internal protection on existing lines. RSPA felt strongly that these records should continue to be kept for the service life of the pipeline, because they provide a valuable database for use in assessing corrosion problems.

The TPSSC unanimously supported the proposal.

Three pipeline-related associations, 10 operators, and one state agency commented on the proposal. Four of these commenters agreed with the proposal as written; the rest qualified their support by recommending changes.

Five commenters, including two pipeline-related associations and a state agency, were not persuaded of the importance of keeping records of corrosion monitoring under §192.465 for the life of the pipe. Most of these commenters declared that 5 years would be adequate, but did not explain why a longer period is excessive. Lacking any convincing documentation to the contrary, RSPA believes the current rule should stay in effect. In our experience, a history of corrosion monitoring sheds light on the possible causes of a pipeline's condition. Such history has proven to be a valuable resource in deciding the extent and kind of remedial action needed when corrosion problems emerge on a pipeline.

Regarding the proposed 5-year retention time for records other than those required by §§192.465(a) and (e) and 192.475(b), two commenters said the minimum time should be 3 years to coincide with the longest interval between inspections. Two others suggested that instead of a set time, we adopt a performance standard for record retention, basing it on the time needed to observe trends, inquire into compliance, or collect superseding data. All these comments provide a reasonable basis for record retention. However, our main concern is that operators keep records for a period that is compatible with the occurrence of routine compliance investigations. Therefore, for simplicity and uniformity, we have decided to adopt the proposed 5-year minimum retention time.

The state agency that commented objected to the 5-year proposal on grounds that it would sacrifice information about why external or atmospheric corrosion control was not installed on pipelines under §§192.455, 192.457, and 192.479. RSPA believes the loss of this information after 5 years would not be significant, because the pipelines involved are covered by requirements for periodic inspections or tests for corrosion under §§192.465 and 192.481.

Section 192.553, General Requirements. (See previous discussion under §192.14).

Section 192.607, Determination of Class Location and Maximum Allowable Operating Pressure.

Because §192.607 has no continuing effect and the deadlines for compliance have expired, RSPA proposed to remove §192.607 from part 192.

Fourteen TPSSC members voted for the proposal and one member abstained.

Five operators, one pipeline-related association, and one state agency commented on the proposed removal of §192.607. Four operators and the association favored the idea. One operator and the state agency disagreed with removal, believing the rule is needed to tie a pipeline's maximum allowable operating pressure (MAOP) to its class location. Similarly, the NAPS report recommended that we only remove the past compliance deadlines from §192.607, leaving the rest of the rule in place to regulate the relation of class location to stress level on high-stress pipelines.

Section 192.607 was a transitional requirement. Its purpose was to establish plans under which operators initially determined class locations and confirmed or revised the MAOPs of their high-stress pipelines commensurate with their class locations. Section 192.607 provides that the plans had to be executed in accordance with §192.611. This latter section together with §192.609 are sufficient to require that operators have up-to-date class location determinations for high-stress pipelines, and maintain the MAOPs of those lines commensurate with their class locations.

Accordingly, §192.607 is removed from part 192.

Section 192.611, Change in Class Location.

Section 192.611 requires confirmation or revision of a pipeline's MAOP within 18 months after a change in class location. RSPA proposed to reorganize §192.611 to clarify the requirement that the MAOP resulting from confirmation or revision may not exceed the pipeline's previous MAOP. This requirement is currently set forth in §192.611(a)(3)(ii), suggesting that it applies only to confirmations or revisions under paragraph (a)(3), which is not the intent.

Fourteen TPSSC members voted for the proposal and one member abstained.

Five operators and one pipeline-related association commented on the proposal; each agreed with the proposal. Section 192.611 is, therefore, adopted as proposed in the NPRM.

Section 192.614, Damage Prevention Program. To decrease excavation damage to pipelines, §192.614(b)(2) requires operators to notify excavators and the public about the need to locate buried pipelines before excavating. The NPRM proposed to amend the rule to clarify that in contrast to the actual notification required for excavators, only general notification is required for the public. General notice can be given through newspapers, radio, television, or other means of mass communication, as appropriate for the public in the vicinity of the pipeline.

Fourteen TPSSC members voted for the proposal and one member abstained.

Six pipeline operators and two pipeline-related organizations commented. Seven commenters gave their full or qualified approval and one commenter opposed the proposal. The qualified and negative comments were that the rule should inform operators of the acceptable means of notification. We do not feel it is necessary for the rule to do so, however, because the available means of giving general public notice are well known. The amendment to paragraph (b)(2) is adopted as proposed.

Section 192.619, Maximum Allowable Operating Pressure: Steel or Plastic Pipelines.

Section 192.619(a) prescribes six pressure limits for use in determining the MAOP of steel and plastic pipelines, the lowest of which establishes the MAOP. Paragraph (a)(4) limits the MAOP of furnace butt welded pipe to 60 percent of the mill test pressure. Paragraph (a)(5) limits the MAOP of other steel pipe to 85 percent of the highest test pressure to which the pipe has been subjected, whether

by mill test or by the post installation test.

RSPA proposed to repeal paragraphs (a)(4) and (a)(5), primarily because mill tests are not an adequate MAOP consideration. However, to assure consideration of longitudinal joint efficiency, RSPA also proposed, in paragraph (a)(2)(iii), that the class location pressure limit under existing paragraph (a)(2)(ii) be reduced for furnace butt welded pipe and lap welded pipe.

Eleven TPSSC members voted for the proposal, one member supported it with a recommended change, two members opposed it, and one abstained. A member recommended that RSPA not adopt proposed paragraph (a)(2)(iii) because design pressure (under paragraph (a)(1)) adequately covers longitudinal joint concerns. RSPA concurs with this view as explained below in response to public comment.

Thirteen operators, four pipeline-related associations, and one state agency commented on the proposed amendment. Two operators, one pipeline-related association, and one state agency commented that proposed paragraph (a)(2)(iii) could require operators to reduce the operating pressure of some pipelines or test them to higher pressures than they previously were tested, possibly damaging the pipelines. In addition, some commenters stated that proposed paragraph (a)(2)(iii) would duplicate use of longitudinal joint factors.

Upon further consideration of our joint efficiency concern, RSPA concurs with these comments. Further, RSPA has no data showing that pipelines covered by proposed paragraph (a)(2)(iii) pose a risk that warrants pressure reduction or retesting. Therefore, although the final rule repeals paragraphs (a)(4) and (a)(5) as proposed, proposed paragraph (a)(2)(iii) is not adopted.

Section 192.625, Odorization of gas.

Section 192.619(f) requires operators to conduct periodic samplings of gas to assure the proper concentration of odorant. Based on a suggestion by the Oregon Public Utility Commission, the NPRM proposed to allow operators of master meter systems to comply with this sampling requirement by (1) receiving written verification from their gas supplier that odorant meets the required concentration, and (2) conducting periodic sniff tests at system extremities to confirm that the gas contains odorant.

Thirteen TPSSC members voted for the proposal, one against, and one member abstained.

Comments were received from eight pipeline operators, two pipeline-related associations, a mobile home association, and a consultant. One commenter favored the proposal and 11 commenters opposed it. Commenters opposing the proposal argued that (1) gas from a transmission line may be unodorized; (2) gas suppliers may be unwilling to provide written verification of odorization levels because of potential legal liability and the increased burden of providing the written verification; (3) the frequencies of sniff tests and written verifications are unclear; and (4) the proposal would relax odorant monitoring requirements on gas systems which, in general, have a relatively high leakage rate.

The purpose of the proposal was to ease the sampling requirement for operators of master meter systems, who largely do not have the training or resources to adequately carry out the requirement. The alternative of getting written verifications and conducting sniff tests should be much less burdensome than purchasing, maintaining, and using an odorometer or contracting for odorant testing.

We do not feel this potential advantage is outweighed by any of the negative considerations the commenters raised. First of all, most master meter system operators purchase odorized gas from local distribution companies. Although some operators may receive unodorized gas from transmission lines and have to odorize the gas themselves, this situation does not warrant rejecting the proposed alternative. Those operators who receive unodorized gas simply would not be able to take advantage of the alternative. Similarly, operators could not take advantage of the alternative if their gas suppliers are unwilling to provide requested verifications of odorant level. But again this difficulty is no reason to deny the alternative to other operators. Regarding the frequency of verifications and sniff tests, the

proposal called for an initial written verification from the gas supplier and periodic sniff tests thereafter. As with periodic sampling, the frequency of sniff tests would depend on the performance history of odorization in the system: the longer the period of satisfactory odorization, the longer the period between tests to assure proper odorant levels. Testing details would be specified in the operator's operations and maintenance manual under §192.605 and reviewed for adequacy by government inspectors. Finally, the charge that master meter systems have a high leakage rate was unsupported. In a 1984 report, "Exercise of Jurisdiction Over Master Meter Gas Operators," RSPA concluded that master meter systems probably have a small leakage rate in comparison to the leakage rate of utility distribution systems. And more recent safety data continue to substantiate that conclusion. Therefore, after weighing the comments and favorable TPSSC vote, we have decided to amend §192.625(f) as proposed.

Section 192.705, Transmission Lines: Patrolling.

Operators of transmission lines must patrol their rights-of-way for indications of certain adverse conditions. Because of repeated questions about whether patrols may be done from the air, RSPA proposed to change §192.705 to include aerial patrols as an optional method of compliance.

Fourteen TPSSC members voted for the proposal and one abstained.

Six operators and one pipeline-related association commented on the proposal. All but two of these commenters agreed with the proposal. One commenter that disagreed said a list of methods of compliance might be considered exclusive, thus disallowing other appropriate methods. The other commenter that disagreed thought the rule change unnecessary.

RSPA believes the phrase "or other appropriate means of traversing the right-of-way" in the proposed and final rule eliminates any chance the list of compliance methods might be considered exclusive. Also, the need for the rule change is based on RSPA's experience in explaining the meaning of "patrol" under §192.705. The change to §192.705 is, therefore, adopted as proposed.

Section 192.709, Transmission Lines: Record Keeping.

Section 192.709 requires operators to keep various records about transmission lines for as long as the line remains in service. RSPA proposed a shorter retention span that would not affect the usefulness of records in determining an operator's level of compliance effort or in constructing the history of an accident or safety problem. RSPA proposed a minimum 5-year retention period for records of patrols, surveys, inspections, and tests, and a 1-year retention period for records of repairs on facilities other than pipe. We also proposed to clarify the information to be recorded.

Ten TPSSC members voted for the proposal, three members supported it with a recommended change, one member opposed it, and one abstained. The recommended changes were that 5 years should be changed to 3-5 years or to 10 years, and that leaks and linebreaks should also be recorded as the current §192.709 provides. The "No" vote was predicated on an alleged need to keep records of repairs on valves, compressors, and other non-pipe components for 3-5 years.

As with final §192.491(c), RSPA's main concern about non-pipe records is that operators keep records for a minimum period that is compatible with the occurrence of routine compliance investigations. The suggested 3-5 years would not be long enough, and 10 years would be excessive. Therefore, we have adopted the proposed 5-year minimum period.

Repair records, as currently required, already provide information about leaks and linebreaks.

Thus, requirements to keep the records of leaks and linebreaks were omitted from the proposed rule as unnecessary in view of this existing requirement.

As for the "No" vote, RSPA has adopted this minority TPSSC position as explained below in response to a comment by a state agency.

Eight operators, two pipeline-related associations, and one state agency commented on the proposed changes to §192.709. Five of the operators supported the proposal without suggesting any modification.

Two other operators suggested 3 years as an alternative to the proposed 5-year minimum. But, as explained above, 3 years is insufficient for compliance monitoring purposes.

One operator thought the words "for the useful life of the pipe" under proposed §192.709(a) could be misinterpreted. This commenter suggested that instead we adopt the words used in §192.491(c): "for as long as the pipeline remains in service." We agree that for consistency the two sections should use similar wording to describe similar record retention requirements. This comment was, therefore, adopted in the final rule.

One pipeline-related association recommended that §192.709 be like 49 CFR 195.404(c), which applies to hazardous liquid pipelines. We did not adopt this comment because §195.404(c) specifies a 2-year retention period for records of inspections and tests, a time we now find to be insufficient for purposes of compliance investigations. Otherwise the two sections are parallel. The other association reiterated its previous comment, which we opposed as discussed above, that record retention requirements should be performance based.

The state agency that commented objected to the proposed 1-year retention time for non-pipe repairs, saying it was inconsistent with the proposal to keep for at least 5 years records of inspections that may show the need for repair. This commenter reasoned that an inspector might not find any record showing the needed repair was made. RSPA agrees that the two requirements should be congruent. Therefore, the final rule requires that records of non-pipe repairs made as a result of a required patrol, survey, inspection, or test be kept for the same time required for records of such patrol, survey, inspection, or test.

Section 192.721, Distribution Systems: Patrolling.

This section governs the frequency at which operators must patrol mains in distribution systems. The regulation is written in performance terms, except that mains located where anticipated movement or loading could cause leakage must be patrolled at intervals not exceeding 4 1/2 months, but at least four times a year. RSPA proposed a more moderate patrol frequency of twice a year for such mains in Class 1 or 2 locations, in recognition of the lower risk in these less densely populated locations.

Twelve TPSSC members voted for the proposal, one against, one member supported it with a proposed change, and one abstained. The member against the proposal said that separating requirements on the basis of class locations is not always workable for distribution systems. Our response to this minority view is given below following similar comments by operators.

Four operators and two pipeline-related associations commented on the proposal. Three of the operators and one association supported the proposal, but the other operator and association thought class location should not be used as a basis for patrol frequency in distribution systems. One commenter suggested "rural areas" as an alternative to Class 1 and 2 locations.

RSPA agrees that the class location concept is not easy to apply in all distribution systems. Therefore, in the final rule, we have used the term "business district" to represent areas of higher risk and "outside business districts" to represent areas of lower risk. A similar classification method is already in place under §192.723 for leakage surveys in distribution systems. The new patrol requirement matches that method. The term "rural area" was not adopted because it lacks precedent in

part 192.

Rulemaking Notices and Analyses

Paperwork Reduction Act.

This Final Rule revises information collection requirements in part 192 that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104-13). The following revised regulations reduce the existing paperwork burden by 28,326 hours:

- o §§192.491(a) and (b), "Corrosion Control Records," reduces the paperwork burden by 22,486 hours by reducing the number of records, the precision of the measurements, and the amount of time the records must be kept.

- o §192.709, "Transmission Lines; Record keeping," reduces the paperwork burden by 5,840 hours by reducing the amount of time the records must be kept.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has approved the revised information collection requirements of part 192 through May 31, 1999 (OMB No. 2137-0049).

Executive Order 12866 and DOT Regulatory Policies and Procedures.

OMB considers this final rule to be a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, OMB has reviewed the final rule. Also, DOT considers the final rule to be significant under its regulatory policies and procedures (44 FR 11034, February 26, 1979).

A final regulatory evaluation has been prepared and is available in the Docket. RSPA estimates the changes to existing rules will result in savings of \$33,000,000 a year, without associated costs and with no adverse effect on safety. As discussed above, these savings come from the use of new technology, greater flexibility in constructing, maintaining, and operating pipelines, improved clarity, and the elimination of burdensome requirements.

Regulatory Flexibility Act.

RSPA criteria for small companies or entities are those with less than \$1,000,000 in revenues and are independently owned and operated. Few of the companies subject to this rulemaking meet these criteria. Accordingly, based on the facts available concerning the impact of this final rule, I certify under Section 605 of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities.

E. O. 12612.

The final rule would not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), RSPA has determined that the final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR part 192

Incorporation by reference, Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends 49 CFR part 192 as follows:

PART 192 - [AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; 49 CFR 1.53

2. In §192.1, paragraph (b)(1) is revised and paragraph (b)(4) is added to read as follows:

§192.1 Scope of part.

(b) This part does not apply to:

(1) Offshore pipelines upstream from the outlet flange of each facility where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream;

(4) Any pipeline system that transports only petroleum gas or petroleum gas/air mixtures to-

(i) Fewer than 10 customers, if no portion of the system is located in a public place; or

(ii) A single customer, if the system is located entirely on the customer's premises (no matter if a portion of the system is located in a public place).

3. In §192.3, a definition of "Petroleum gas" is added and the definition of "Transmission line" is revised to read as follows:

§192.3 Definitions.

Petroleum gas means propane, propylene, butane, (normal butane or isobutanes), and butylene (including isomers), or mixtures composed predominantly of these gases, having a vapor pressure not exceeding 1434 kPa (208 psig) at 38°C (100°F).

Transmission line means a pipeline, other than a gathering line, that:

(a) Transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not downstream from a distribution center;

(b) Operates at a hoop stress of 20 percent or more of SMYS; or

(c) Transports gas within a storage field.

A large volume customer may receive similar volumes of gas as a distribution center, and includes factories, power plants, and institutional users of gas.

4. Section 192.5 is revised to read as follows:

§192.5 Class locations.

(a) This section classifies pipeline locations for purposes of this part. The following criteria apply to classifications under this section.

(1) A "class location unit" is an onshore area that extends 220 yards on either side of the centerline of any continuous 1-mile length of pipeline.

8. Section 192.121 is revised to read as follows:

§192.121 Design of plastic pipe.

Subject to the limitations of §192.123, the design pressure for plastic pipe is determined in accordance with either of the following formulas:

$$P = 2S \frac{t}{(D - t)} 0.32$$

$$P = \frac{2S}{(SDR - 1)} 0.32$$

where:

P=Design pressure, gauge, kPa (psig).

S=For thermoplastic pipe, the long-term hydrostatic strength determined in accordance with the listed specification at a temperature equal to 23°C (73°F), 38°C (100°F), 49°C (120°F), or 60°C (140°F); for reinforced thermosetting plastic pipe, 75,842 kPa (11,000 psi)

t=Specified wall thickness, mm (in).

D=Specified outside diameter, mm (in).

SDR=Standard dimension ratio, the ratio of the average specified outside diameter to the minimum specified wall thickness, corresponding to a value from a common numbering system that was derived from the American National Standards Institute preferred number series 10.

9. Section 192.123(b) is revised to read as follows:

§192.123 Design limitations for plastic pipe.

(b)

(1) Below -29°C (-20°F), or -40°C (-40°F) if all pipe and pipeline components whose operating temperature will be below 29°C (20°F) have a temperature rating by the manufacturer consistent with that operating temperature; or

(2) Above the following applicable temperatures:

(i) For thermoplastic pipe, the temperature at which the longterm hydrostatic strength used in the design formula under §192.121 is determined. However, if the pipe was manufactured before May 18, 1978 and its longterm hydrostatic strength was determined at 23°C (73°F), it may be used at temperatures up to 38°C (100°F).

(ii) For reinforced thermosetting plastic pipe, 66°C (150°F).

10. The introductory text of §192.179(a) is revised to read as follows:

§192.179 Transmission line valves.

(a) Each transmission line, other than offshore segments, must have sectionalizing block valves spaced as follows, unless in a particular case the Administrator finds that alternative spacing would provide an equivalent level of safety:

11. Section 192.203(b)(2) is revised to read as follows:

§192.203 Instrument, control, and sampling pipe and components.

(b)

(2) Except for takeoff lines that can be isolated from sources of pressure by other valving, a shutoff valve must be installed in each takeoff line as near as practicable to the point of takeoff. Blowdown valves must be installed where necessary.

12. Section 192.227(b) is revised to read as follows:

§192.227 Qualification of welders.

(b) A welder may qualify to perform welding on pipe to be operated at a pressure that produces a hoop stress of less than 20 percent of SMYS by performing an acceptable test weld, for the process to be used, under the test set forth in section I of Appendix C of this part. Each welder who is to make a welded service line connection to a main must first perform an acceptable test weld under section II of Appendix C of this part as a requirement of the qualifying test.

13. In §192.229, paragraph (c) is revised and paragraph (d) is added to read as follows:

§192.229 Limitations on welders.

(c) A welder qualified under §192.227(a) --

(1) May not weld on pipe to be operated at a pressure that produces a hoop stress of 20 percent or more of SMYS unless within the preceding 6 calendar months the welder has had one weld tested and found acceptable under section 3 or 6 of API Standard 1104, except that a welder qualified under an earlier edition previously listed in Appendix A of this part may weld but may not requalify under that earlier edition; and

(2) May not weld on pipe to be operated at a pressure that produces a hoop stress of less than 20 percent of SMYS unless the welder is tested in accordance with paragraph (c)(1) of this section or requalifies under paragraph (d)(1) or (d)(2) of this section.

(d) A welder qualified under §192.227(b) may not weld unless --

(1) Within the preceding 15 calendar months, but at least once each calendar year, the welder has requalified under §192.227(b); or

(2) Within the preceding 7 1/2 calendar months, but at least twice each calendar year, the welder has had--

(i) A production weld cut out, tested, and found acceptable in accordance with the qualifying test, or

(ii) For welders who work only on service lines 2 inches or smaller in diameter, two sample welds tested and found acceptable in accordance with the test in section III of Appendix C of this part.

14. Section 192.241(c) is revised to read as follows:

§192.241 Inspection and test of welds.

(c) The acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in section 6 of API Standard 1104. However, if a girth weld is unacceptable under those standards for a reason other than a crack, and if the Appendix to API Standard 1104 applies to the weld, the acceptability of the weld may be further determined under that Appendix.

15. Section 192.243(d)(4) is revised to read as follows:

§192.243 Nondestructive testing.

- (d) (4) At pipeline tie-ins, including tie-ins of replacement sections, 100 percent.

16. In §192.281, paragraph (c)(3) is redesignated as paragraph (c)(4) and paragraph (c)(3) is added to read as follows:

§192.281 Plastic pipe.

- (c) (3) An electrofusion joint must be joined utilizing the equipment and techniques of the fittings manufacturer or equipment and techniques shown, by testing joints to the requirements of §192.283(a)(1)(iii), to be at least equivalent to those of the fittings manufacturer.

17. In §192.283, the word "or" is removed from the end of paragraph (a)(1)(i), paragraph (a)(1)(ii) is revised, and paragraph (a)(1)(iii) is added to read as follows:

§192.283 Plastic pipe; qualifying joining procedures.

- (a) (i) In the case of thermosetting plastic pipe, paragraph 8.5 (Minimum Hydrostatic Burst Pressure) or paragraph 8.9 (Sustained Static Pressure Test) of ASTM D2517, or
(ii) In the case of electrofusion fittings for polyethylene pipe and tubing, paragraph 9.1 (Minimum Hydraulic Burst Pressure Test), paragraph 9.2 (Sustained Pressure Test), paragraph 9.3 (Tensile Strength Test), or paragraph 9.4 (Joint Integrity Tests) of ASTM Designation F1055.

18. Section 192.317(a) is revised to read as follows:

§192.317 Protection from hazards.

- (a) The operator must take all practicable steps to protect each transmission line or main from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or to sustain abnormal loads. In addition, the operator must take all practicable steps to protect offshore pipelines from damage by mud slides, water currents, hurricanes, ship anchors, and fishing operations.

19. Section 192.319(c) is revised to read as follows:

§192.319 Installation of pipe in a ditch.

(c) All offshore pipe in water at least 12 feet deep but not more than 200 feet deep, as measured from the mean low tide, except pipe in the Gulf of Mexico and its inlets under 15 feet of water, must be installed so that the top of the pipe is below the natural bottom unless the pipe is supported by stanchions, held in place by anchors or heavy concrete coating, or protected by an equivalent means. Pipe in the Gulf of Mexico and its inlets under 15 feet of water must be installed so that the top of the pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation.

20. In §192.321, paragraph (a) is revised and paragraph (g) is added to read as follows:

§192.321 Installation of plastic pipe.

(a) Plastic pipe must be installed below ground level unless otherwise permitted by paragraph (g) of this section.

(g) Uncased plastic pipe may be temporarily installed above ground level under the following conditions:

(1) The operator must be able to demonstrate that the cumulative aboveground exposure of the pipe does not exceed the manufacturer's recommended maximum period of exposure or 2 years, whichever is less.

(2) The pipe either is located where damage by external forces is unlikely or is otherwise protected against such damage.

(3) The pipe adequately resists exposure to ultraviolet light and high and low temperatures.

21. In §192.327, the introductory text of paragraph (a) is revised, paragraph (e) is revised, and paragraphs (f) and (g) are added to read as follows:

§192.327 Cover.

(a) Except as provided in paragraphs (c), (e), (f), and (g) of this section, each buried transmission line must be installed with a minimum cover as follows:

(e) Except as provided in paragraph (c) of this section, all pipe installed in a navigable river, stream, or harbor must be installed with a minimum cover of 48 inches in soil or 24 inches in consolidated rock between the top of the pipe and the natural bottom.

(f) All pipe installed offshore, except in the Gulf of Mexico and its inlets, under water not more than 200 feet deep, as measured from the mean low tide, must be installed as follows:

(1) Except as provided in paragraph (c) of this section, pipe under water less than 12 feet deep, must be installed with a minimum cover of 36 inches in soil or 18 inches in consolidated rock between the top of the pipe and the natural bottom.

(2) Pipe under water at least 12 feet deep must be installed so that the top of the pipe is below the natural bottom, unless the pipe is supported by stanchions, held in place by anchors or heavy concrete coating, or protected by an equivalent means.

(g) All pipelines installed under water in the Gulf of Mexico and its inlets, as defined in §192.3, must be installed in accordance with §192.612(b)(3).

22. Section 192.375(a) is revised to read as follows:

§192.375 Service lines: Plastic.

- (a) Each plastic service line outside a building must be installed below ground level, except that
- (1) It may be installed in accordance with §192.321(g); and
 - (2) It may terminate above ground level and outside the building, if:
 - (i) The above ground level part of the plastic service line is protected against deterioration and external damage; and
 - (ii) The plastic service line is not used to support external loads.

23. In §192.455, paragraphs (a)(2) and (f)(1) are revised to read as follows:

§192.455 External corrosion control: Buried or submerged pipelines installed after July 31, 1971.

- (a)
- (2) It must have a cathodic protection system designed to protect the pipeline in accordance with this subpart, installed and placed in operation within 1 year after completion of construction.
- (f)
- (1) For the size fitting to be used, an operator can show by test, investigation, or experience in the area of application that adequate corrosion control is provided by the alloy composition; and

24. Section 192.475(c) is revised to read as follows:

§192.475 Internal corrosion control: General.

- (c) Gas containing more than 0.25 grain of hydrogen sulfide per 100 standard cubic feet (4 parts per million) may not be stored in pipe-type or bottle-type holders.

25. Section 192.485(c) is added to read as follows:

§192.485 Remedial measures: Transmission lines.

- (c) Under paragraphs (a) and (b) of this section, the strength of pipe based on actual remaining wall thickness may be determined by the procedure in ASME/ANSI B31G or the procedure in AGA Pipeline Research Committee Project PR 3-805 (with RSTRENG disk). Both procedures apply to corroded regions that do not penetrate the pipe wall, subject to the limitations prescribed in the procedures.

26. Section 192.491 is revised to read as follows:

§192.491 Corrosion control records.

- (a) Each operator shall maintain records or maps to show the location of cathodically protected piping, cathodic protection facilities, galvanic anodes, and neighboring structures bonded to the cathodic protection system. Records or maps showing a stated number of anodes, installed in a stated manner or spacing, need not show specific distances to each buried anode.
- (b) Each record or map required by paragraph (a) of this section must be retained for as long as the pipeline remains in service.

(c) Each operator shall maintain a record of each test, survey, or inspection required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrective condition does not exist. These records must be retained for at least 5 years, except that records related to §§192.465(a) and (e) and 192.475(b) must be retained for as long as the pipeline remains in service.

27. Section 192.553(d) is revised to read as follows:

§192.553 General requirements.

(d) Limitation on increase in maximum allowable operating pressure. Except as provided in §192.555(c), a new maximum allowable operating pressure established under this subpart may not exceed the maximum that would be allowed under this part for a new segment of pipeline constructed of the same materials in the same location. However, when uprating a steel pipeline, if any variable necessary to determine the design pressure under the design formula (§192.105) is unknown, the MAOP may be increased as provided in §192.619(a)(1).

28. Section 192.607 is removed and reserved.

29. In §192.611, paragraphs (b) and (c) are redesignated as (c) and (d), respectively; paragraph (a)(3)(ii) is redesignated as paragraph (b), and paragraph (a)(3)(iii) is redesignated as paragraph (a)(3)(ii).

30. In §192.614, the introductory text of paragraph (b)(2) is revised to read as follows:

§192.614 Damage prevention program.

(b) (2) Provide for general notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (b)(1) of the following as often as needed to make them aware of the damage prevention program:

31. In §192.619, paragraph (a)(1) is revised to read as follows, paragraphs (a)(4) and (a)(5) are removed, paragraph (a)(6) is redesignated as paragraph (a)(4), and paragraph (b) is amended by removing "(a)(6)" and adding "(a)(4)" in its place:

§192.619 Maximum allowable operating pressure: Steel or plastic pipelines.

- (a) (1) The design pressure of the weakest element in the segment, determined in accordance with subparts C and D of this part. However, for steel pipe in pipelines being converted under §192.14 or uprated under subpart K of this part, if any variable necessary to determine the design pressure under the design formula (§192.105) is unknown, one of the following pressures is to be used as design pressure:
- (i) Eighty percent of the first test pressure that produces yield under section N5.0 of Appendix N of ASME B31.8, reduced by the appropriate factor in paragraph (a)(2)(ii) of this section; or
 - (ii) If the pipe is 324 mm (12 3/4 in) or less in outside diameter and is not tested to yield under this paragraph, 1379 kPa (200 psig).

32. Section 192.625 (f) is revised to read as follows:

§192.625 Odorization of gas.

(f) Each operator shall conduct periodic sampling of combustible gases to assure the proper concentration of odorant in accordance with this section. Operators of master meter systems may comply with this requirement by -

- (1) Receiving written verification from their gas source that the gas has the proper concentration of odorant; and
- (2) Conducting periodic "sniff" tests at the extremities of the system to confirm that the gas contains odorant.

33. Section 192.705(c) is added to read as follows:

§192.705 Transmission lines: Patrolling.

(c) Methods of patrolling include walking, driving, flying or other appropriate means of traversing the right-of-way.

34. Section 192.709 is revised to read as follows:

§192.709 Transmission lines: Record keeping.

Each operator shall maintain the following records for transmission lines for the periods specified:

(a) The date, location, and description of each repair made to pipe (including pipe-to-pipe connections) must be retained for as long as the pipe remains in service.

(b) The date, location, and description of each repair made to parts of the pipeline system other than pipe must be retained for at least 5 years. However, repairs generated by patrols, surveys, inspections, or tests required by subparts L and M of this part must be retained in accordance with paragraph (c) of this section.

(c) A record of each patrol, survey, inspection, and test required by subparts L and M of this part must be retained for at least 5 years or until the next patrol, survey, inspection, or test is completed, whichever is longer.

35. Section 192.721(b) is revised to read as follows:

§192.721 Distribution systems: Patrolling.

(b) Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage must be patrolled -

(1) In business districts, at intervals not exceeding 4 1/2 months, but at least four times each calendar year; and

(2) Outside business districts, at intervals not exceeding 7 1/2 months, but at least twice each calendar year.

36. In Appendix A, section I. is amended by redesignating subsections A. through F. as subsections B. through G., respectively, and by adding a new subsection A.; and section II. is amended by redesignating subsections A. through E. as subsections B. through F., respectively, by adding a new subsection A. and a new subsection C.12., by redesignating subsections D.3. through D.5. as subsections D.5. through D.7., respectively, and by adding new subsections D.3. and D.4. as follows:

Appendix A - Incorporated By Reference

- I.
 - A. American Gas Association (AGA), 1515 Wilson Boulevard, Arlington, VA 22209.
- II.
 - A. American Gas Association (AGA):
 - 1. AGA Pipeline Research Committee, Project PR-3-805, "A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 22, 1989).
 - C.
 - 12. ASTM Designation: F1055 "Standard Specification for Electrofusion Type Polyethylene Fittings for Outside Diameter Controlled Polyethylene Pipe and Tubing" (F1055-95).
 - D.
 - 3. ASME/ANSI B31G "Manual for Determining the Remaining Strength of Corroded Pipelines" (1991).
 - 4. ASME/ANSI B31.8 "Gas Transmission and Distribution Piping Systems" (1995).

Issued in Washington D.C. on _____

Dr. D K. Sharma
Administrator

Docket No. PS-118; Amdt. 192-79

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-118; Amendment 192-79]

RIN 2137-AB97

Excess Flow Valve—Performance Standards

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In the process of routine excavation activities, excavators often sever gas service lines causing loss of life, injury, or property damage by fire or explosion. Excess flow valves (EFVs) restrict the flow of gas by closing automatically when a line is severed, thus mitigating the consequences of service line failures. In this final rule, RSPA has developed standards for the performance of EFVs used to protect single-residence service lines. If an EFV is installed on such a line, it must meet these performance standards.

DATES: This final rule takes effect July 22, 1996.

FOR FURTHER INFORMATION CONTACT: Mike Israni (202) 366-4571, regarding the subject matter of this final rule, or the Dockets Unit, (202) 366-4453, regarding copies of this final rule or other material in the docket that is referenced in this rule.

SUPPLEMENTARY INFORMATION:

Statutory Mandate

In 49 U.S.C. 60110 Congress directs the Department of Transportation to issue regulations prescribing the circumstances under which operators of natural gas distribution systems must install EFVs. If the Department determines that there are no circumstances under which EFVs should be installed, the Department is to report this determination, and the reasons for the decision, to Congress. RSPA, on behalf of the Department, has determined that there are no circumstances under which the Department should require the installation of EFVs, primarily because the costs far exceed the benefits of such installation. RSPA has sent the report of its reasons for this determination to Congress. The report to Congress (April 4, 1995) and the cost/benefit analysis of mandatory EFV installation are available in the docket. Costs and benefits are also discussed later in this document under "Cost/Benefit Analysis."

49 U.S.C. 60110 further requires the Department to develop standards for the performance of EFVs used to protect service lines in a natural gas distribution system. The development of these

standards is the subject of this rulemaking.

The statute also requires the Department to issue a rule requiring operators to notify customers about EFV availability and to offer to install EFVs that meet the performance standards, if the customer pays for the installation. RSPA will initiate a separate notice of proposed rulemaking for customer notification.

The Problem

Despite efforts, such as damage prevention programs, to reduce the frequency of excavation-related service line incidents on natural gas distribution service lines, such incidents persist and continue to result in death, injury, fire, or explosion. During the period from March 1991 through February 1994, 30 incidents with consequences that might have been mitigated by an EFV were reported to RSPA. These incidents, mostly excavation-related, resulted in 2 fatalities, 16 injuries, and an estimated \$3,249,595 in property damage. Incident history is explained in the November 1991 and January 1995 cost/benefit studies evaluating mandatory EFV installation. Because damage prevention measures are not foolproof, RSPA has sought to identify ways to mitigate the consequences of these incidents. The National Transportation Safety Board (NTSB) and others have proposed EFVs as a means of mitigation.

NTSB Recommendations

NTSB has recommended EFVs as a means of reducing or preventing injury or death from incidents resulting from service line breaks or ruptures. Since 1971, NTSB has issued seven recommendations regarding the use of EFVs in service lines. NTSB's recommendations are summarized and discussed in the Notice of Proposed Rulemaking on this rulemaking (58 FR 21524; April 21, 1993).

The Advance Notice of Proposed Rulemaking (ANPRM)

RSPA issued an ANPRM (55 FR 52188; December 20, 1990) seeking information on the desirability of requiring the installation of EFVs on gas distribution service lines to reduce the damage from service line ruptures. The ANPRM also contained a questionnaire to collect current operational data on the use of EFVs by natural gas distribution operators. The results of the ANPRM were summarized in the NPRM and are available in the docket.

The Notice of Proposed Rulemaking (NPRM)

In 1993, RSPA published an NPRM (Notice 2: 58 FR 21524; April 21, 1993), titled "Excess Flow Valve Installation on Service Lines," that proposed to amend 49 CFR Part 192 to require installation of EFVs on new and replaced single residence service lines operating at a pressure of 10 psig or more. This NPRM also proposed performance standards for EFVs and conditions under which EFVs must be installed. The initial comment period for this NPRM closed June 21, 1993. The NPRM is available in the docket.

RSPA received 140 written comments in response to the NPRM: 14 from industry associations, 1 from an EFV manufacturer, 102 from local distribution companies, 2 from consultants, 17 from Congress, state agencies, and regulatory associations, 3 from transmission companies, and 1 from a group of commenters, designated hereafter as the Joint Commenters (see below).

The Public Meeting

RSPA held a public meeting on June 18, 1993 (58 FR 33064; June 15, 1993) to enable interested parties to present additional comments on several of the issues presented in the NPRM. In the notice announcing the public meeting, RSPA also extended the comment period to July 6, 1993, to allow those not able to attend the meeting to have access to the transcript. Representatives of the American Gas Association (AGA), UMAC (an EFV manufacturer), the Gas Safety Action Council (GASAC), the National Association of Pipeline Safety Representatives (NAPSR), and NTSB spoke at the meeting. The AGA representative objected to the proposed rule, especially to the expected benefits estimated in the cost/benefit study. GASAC, NTSB, and UMAC supported an EFV rule, but not as proposed. The NAPSR representative noted that in NAPSR's experience EFVs have not been cost beneficial.

The Joint Commenters

On December 20, 1993, a group, designating itself as the Joint Commenters, filed comments that recommended language to include in an EFV rule. The Joint Commenters included GASAC, EFV manufacturers, and two gas pipeline distribution associations. Although not a signatory to the comments, NTSB sent two letters to a pipeline association supporting the Joint Commenters' recommendations. The NTSB letters are available in the docket.

The Joint Commenters did not include representatives from the two major state pipeline safety associations, NAPSR, and the National Association of Regulatory Utility Commissioners (NARUC). NAPSR originally participated in discussions with the Joint Commenters but later dropped out because NAPSR members oppose a federal requirement to install EFVs. The comments from NAPSR are available in the docket.

The Joint Commenters recommended regulatory language that their signatories would support if RSPA were to adopt this recommendation as a final rule. In a Notice of Reopening Comment Period, RSPA reopened the comment period to solicit comment on the safety merits of the Joint Commenters' recommended language (59 FR 39319; August 2, 1994). The reopened comment period closed October 3, 1994. In addition to seeking comments on the safety merits of the recommendation, RSPA also sought comment on: whether to allow EFVs with a bypass feature; whether, and to what extent, the presence of contaminants in the gas stream should preclude installation of an EFV; and whether RSPA should delay issuing a rule until industry performance standards for EFVs are developed.

An additional 70 comments were received in response to the Notice of Reopening Comment Period: 7 from industry associations, 1 from an EFV manufacturer, 56 from local distribution companies, 5 from Congress, state agencies, and regulatory associations, and 1 from a transmission company. A discussion of the 140 comments to the NPRM and 70 comments to the Notice of Reopening Comment Period and RSPA disposition of these comments is found below.

Advisory Committee Review

The Technical Pipeline Safety Standards Committee (TPSSC) was established by statute to evaluate the technical feasibility, reasonableness, and practicability of proposed regulations. The TPSSC met on August 3, 1993, in Washington, DC, to consider the EFV standards proposed in the April 1993 NPRM. The TPSSC voted 11 to 0 against adopting the proposed rule as written. In addition, the TPSSC voted 10 to 1 against RSPA issuing any rule on EFVs. However, the TPSSC voted 10 to 1 to respect the wishes of Congress and to provide support for the Congressional mandate as implemented by RSPA. RSPA addresses each of the TPSSC's recommendations in the discussion of comments below.

Petition for Rulemaking

On July 14, 1995, AGA submitted a petition for rulemaking on EFV performance standards and customer notification requirements. In this petition, AGA urged OPS to adopt industry performance and manufacturing standards as soon as they are available and, in the interim, to adopt the performance standards recommended by the Joint Commenters. RSPA is not required to consider those comments in the petition pertaining to performance standards since the comments were received well after the close of the re-opened comment period. However, RSPA notes that those comments do not raise any issues not already raised in prior comments and addressed in this rule.

RSPA will consider the bulk of AGA's petition dealing with customer notification requirements in the customer notification rulemaking.

Cost/Benefit Analysis (Mandating EFV installation)

RSPA recognizes the beneficial safety effects of EFVs. However, after extensive study and rulemaking, RSPA has decided not to require the installation of EFVs, primarily because the costs far exceed the benefits of such installation.

Many comments to the NPRM and Notice of Reopening Comment Period cited the need for RSPA to redo the cost/benefit study that had been prepared to accompany the NPRM. Commenters said incident frequency, fire and police response costs, and property damage costs were overstated. The most frequent objection was that RSPA overestimated property loss and fire fighting costs for incidents with less than \$5,000 in property damage. Commenters pointed out that leaks occur with greater frequency than incidents and that, by equating leak repair reports with incident reports, RSPA overstated the benefits to be gained. Many commenters also said that the \$20 estimated cost to install an EFV was too low.

In light of the commenters' criticisms, RSPA thoroughly reexamined the cost/benefit study. The revised study included updated data regarding service line incidents and revised information on related costs and anticipated benefits. In the most significant benefit change, RSPA reduced its estimate of the number of nonreportable incidents that could have benefitted from an EFV installation. Criticisms of its estimates on nonreportable incidents led RSPA to conclude that the original estimate, over 143 thousand per year, significantly overstated the number of nonreportable incidents whose consequences might be mitigated by EFVs. RSPA used a different approach to develop a more reasonable estimate approximately 13 thousand per year, for the final study. This revised number of nonreportable incidents is largely responsible for the decrease in the present value of the benefits from \$21.02-\$31.00 per service in the draft study to \$7.42 per service in the final study.

In other changes, RSPA revised its cost estimate by using the mid-point of the cost-range in EFVs. The original estimate looked only at the EFV cost to the largest current installers of EFVs, whereas the revised estimate considered the EFV cost to all current installers of EFVs. RSPA also used newer incident data to develop better estimates of the consequences of incidents before and after an EFV installation.

As a result of RSPA's reexamination of the cost/benefit study, the present value of costs changed from the draft study figure of \$20.20 per installed EFV with a bypass to a final study figure of \$30.29. In addition, in the final study, the present value of costs for an EFV with positive shutoff was estimated to be \$37.09 per installed EFV.

The final cost/benefit study found the cost of installing an EFV to exceed the benefits by a 4.5:1 ratio. This result, along with consideration of other criticisms of a rule requiring installation, discussed in more detail below, led RSPA to determine that it would not require installation but would require that any EFV installed meet certain performance criteria. The final cost/benefit study explains in detail how each cost and benefit was calculated. Both the draft and final cost/benefit studies examining EFV installation are available in the docket.

The Final Rule

The final rule establishes a new section in the pipeline safety regulations, §192.381, "Service lines: Excess flow valve performance standards." For the reasons previously explained, the final rule does not require installation of EFVs. In accordance with 49 U.S.C. 60110, the rule sets performance standards for any EFV that will be used in a single-residence gas service line operating continuously at not less than 10 psig. The final rule incorporates almost all the performance standards that the Joint Commenters recommended, rather than those RSPA proposed in the NPRM.

An EFV will have to be manufactured and tested by the manufacturer according to an industry specification or a manufacturer's written specification to ensure that the EFV will function properly up to its rated maximum operating pressure and at all temperatures expected in the service line's operating environment. An EFV, like any other valve, will have to comply with subparts B and D of Part 192. The required tolerance has been raised so that an EFV will be required to close at, or not more than 50 percent above the rated flow, instead of at the proposed 10 percent. As commenters requested, an operator will have the choice of using an EFV with either a positive shutoff or bypass feature. Upon closure an EFV must reduce the gas flow to no more than 5 percent of the manufacturer's specified minimum flow rate, up to a maximum of 20 cubic feet per hour for a bypass-type EFV or 0.4 cubic feet per hour for a positive shut off-type EFV. An operator will have to mark or otherwise identify the presence of an EFV in the service line.

Several proposed performance requirements have not been adopted. An EFV will not have to comply with the requirements of §§ 192.363 and 192.365 that apply to other service line valves. Service line capacity will not have to exceed the manufacturer's EFV flow rating by 50 percent. An EFV will not be required to be tested upon installation and each time a customer's meter is removed or replaced, or to close automatically if the customer's meter, regulator or service valve is sheared off. Furthermore, an operator will not be required to verify the rated flow or replace an EFV that does not close automatically.

The final rule recommends that an operator locate an EFV beyond the hard surface and as near as practical to the fitting connecting the service line to its source of gas supply to ensure that the EFV protects the maximum length of service line and to assist in locating the EFV. The final rule also recommends that to augment performance reliability, an operator not install an EFV where the contaminants in the gas stream will cause the valve to malfunction or interfere with necessary operation and maintenance activities on the service line, such as blowing liquids from the line.

Discussion of Comments

Although comments were submitted in response to the proposal to require installation of EFVs, these comments were also relevant to developing a performance standards rule. Many of the comments focussed on the performance criteria RSPA included in the proposal.

General Comments--Except for NTSB, valve manufacturers, and GASAC, virtually all of the 140 commenters to the NPRM objected to the proposed rule on installation. The major objections were that EFV installation should not be federally mandated, that each state pipeline authority should be allowed to establish the rules for its state; that a positive shutoff EFV should not be required; that testing an EFV while in service is unnecessary and overly expensive; that EFV installation should be delayed until industry standards are developed; and, that the cost/benefit study supporting the proposed rule is flawed. The majority of commenters also maintained that EFV installation should not be required where contaminants could cause the EFV to malfunction and inadvertently shutoff service to the customer.

Nearly all of the 70 commenters responding to the Notice of Reopening Comment Period proposed that RSPA adopt the Joint Commenters' recommendations on performance language because the recommended language was less objectionable than the NPRM's proposed language. The

commenters also favored giving an operator the option to install either a bypass or positive shutoff EFV. Overall, because of concerns about EFV reliability, gas distribution operators favored waiting until industry standards are developed and accepted before requiring installation of EFVs. Many commenters restated their objection to the findings of the cost/benefit study.

Six large operators operating at least 9 million service lines (18 percent of all U.S. service lines) opposed both the NPRM's proposal and the Joint Commenters' recommendations. The operators' major objections were that the cost/benefit study grossly overstated benefits, that industry standards are needed because EFVs do not operate reliably, and that costs to remove EFVs after a malfunction are high.

Comments about the cost/benefit study have previously been discussed. Other general comments are discussed below, as well as specific comments about each RSPA-proposed performance standard and the associated Joint Commenters' recommendation. To avoid repetition, similar comments are discussed in only one section.

Discussion on State vs. Federal Mandate

Comments--NAPSR expressed opposition to any federal mandate to install EFVs, arguing that any such regulatory requirements should be at the state level. On two occasions NARUC passed resolutions proposing that any requirement for EFVs be determined by the individual state pipeline safety agencies. The NARUC Subcommittee for Pipeline Safety polled the state regulatory agencies, gathered data, and prepared a report of its findings. NARUC found that only two states, Massachusetts and New York, favored a federal mandate to install EFVs.

Six major operators (three operating in California) opposed any federal requirement to install EFVs, arguing that states should be allowed to determine the need for EFVs based on state-developed criteria.

Response--Because of RSPA's decision not to issue a rule requiring the installation of EFVs, each state will be able to determine if it should require such installation based on circumstances unique to that state.

Industry Standards

In the absence of standards by an industry-sponsored safety standards committee, RSPA proposed several requirements for the manufacture and operation of any EFV that would be installed in a single-residence gas service line. The Joint Commenters' recommendation also included performance standards for single-residence gas service lines.

Comments on NPRM--Many commenters said RSPA should not issue a final rule until industry manufacturing and performance safety standards are prepared and adopted. The TPSSC recommended that RSPA initiate the development of standards by The American National Standards Institute (ANSI), American Society of Testing Materials (ASTM), or other nationally recognized and accredited organization for the manufacture, testing, and operation of EFVs. The TPSSC further recommended that when such standards are enacted, RSPA should issue an NPRM for EFVs incorporating such standards for TPSSC review. The Gas Piping Technology Committee (GPTC) commented that its ANSI/GPTC Z380 committee was developing performance, operating, and installation guidelines for EFVs. GPTC said guidance will be offered on choosing operating pressure ranges, flow rates, bleed-by, and reset characteristics, length and diameter of service piping, inline contaminants, purging procedures, joining methods, and service line locations.

Comments to Notice of Reopening Comment Period--Many commenters said RSPA should take no final action until industry standards are available because standards would assure EFV reliability.

Response--RSPA is not requiring operators to install EFVs on any single-residence service line, whatever its operating pressure. However, RSPA does not want an EFV, if installed, to cause a loss in service, especially at a time when the service is most needed by the consumer, such as during the winter heating season. Thus, the performance standards have been established for EFVs that are installed on a service line that operates at or above 10 psig continuously during the year. Setting the performance standards at this threshold is influenced by two of the largest users of EFVs who, as standard practice, limit EFV installation to service lines in systems where service line inlet pressure does not drop below 10 psig during the year.

Because service line pressure will most likely be at its lowest level during the coldest weather, especially in colder climates, an operator should consider the pressure drop in the service line due to the restriction of gas flow caused by an EFV. If pressure drop is considered, an EFV should not cause a reduction in safety or loss of service in any service line.

Proposed Section 192.381(a)--(replaced service lines)--RSPA proposed that EFVs be installed on certain new and replaced service lines.

Response--This proposal is no longer relevant since EFV installation is not being required.

Proposed Section 192.381(b)(1)--(installation)--RSPA proposed in the NPRM that an EFV be installed as close to the main or transmission line as practicable. The Joint Commenters recommended installation in or as near as practicable to the service line fitting connecting the service line to its gas supply.

Comments--Many commenters suggested RSPA remove any reference to transmission lines in the rule. Several commenters said EFVs are not available that will withstand transmission line pressures. Others stated that the statutory mandate was intended to apply only to distribution systems. The TPSSC voted 7 to 4 that all references to transmission lines be dropped from the proposed rule.

A few commenters objected to what they thought was the proposed requirement to install EFVs immediately downstream of the service-to-main connection when the line serves more than one residence (branch service). Other commenters were concerned that the proposed rule would require EFV installation below hard surfaces such as asphalt or concrete, making installation very costly.

Response--In the NPRM, RSPA intended that all new and replaced service lines, whether from a main or transmission line, where the source of gas supply consistently operates above 10 psig, be required to have an EFV installed. The reference to "main" and "transmission" lines was intended to cover farm taps, as farm taps are also subject to the type of incident that could benefit from an EFV. The final rule deletes the reference to "main" and "transmission" and sets performance standards for EFVs installed on single-residence gas service lines. By referring to "service" line, RSPA intends for the standards to apply if an EFV is installed on a farm tap. A farm tap operates as a service line when a local distribution company operates a metered farm tap on a transmission line delivering gas to a farmer or other landowner. Accordingly, although the rule does not require installation on any single-residence service line, an EFV that meets the required performance standards can be installed on a service line from a main or a branch off a transmission line.

RSPA never intended that an EFV serve more than one family residence. RSPA recognizes that an EFV would be difficult to size when the gas supply is serving multiple residences because of widely varying gas volume through the EFV. Because of this difficulty, the performance standards in this final rule are limited to EFVs that are installed on single-residence service lines.

RSPA agrees that removing an EFV under a hard surface would be overly expensive if an EFV failed to function. Therefore, RSPA recommends that an EFV be located beyond the hard surface and as near as practical to the fitting connecting the service line to its source of gas supply.

Proposed Section 192.381(b)(2)--(Section 192 Subparts B & D)--As noted above, the NPRM proposed and the Joint Commenters recommended that EFVs meet the applicable requirements of subparts B and D of part 192.

Comments--No substantive comments were received on this proposal.

Response--Subpart B establishes minimum requirements for selection and qualification of materials to be used in pipelines. Subpart D prescribes minimum requirements for the design and installation of pipeline components and facilities. Since these requirements are general performance requirements that apply to all valves, they are included in the performance requirements applicable to EFVs.

Proposed Section 192.381(b)(3)--(bypass)--RSPA proposed that an EFV be designed to prevent pressure equalization across the EFV after the EFV closes, thereby prohibiting an operator from installing an EFV with a bypass feature. The bypass feature allows pressure to equalize and the EFV to automatically reopen after closure because it allows a small amount of gas to pass through the EFV. In contrast, a positive shutoff feature allows only minute amounts of gas to pass through the EFV after it closes, and requires backpressuring downstream to reset the EFV. The Joint Commenters' recommendation would allow either type of EFV.

In the Notice of Reopening Comment Period, RSPA sought comment on the safety of using EFVs with or without the bypass feature and gave two examples, provided by two large local distribution operators, of potential dangers that might be caused by the bypass feature. RSPA also asked for comments on the conditions under which automatically resetting EFVs should or should not be required in residential service lines and on the linkage between the bypass feature and unauthorized repairs to damaged service lines.

Comments to NPRM--Many commented on the proposal prohibiting the use of EFVs with a bypass feature. Commenters, including several at the public meeting, were virtually unanimous in favor of an operator having the option to select an EFV with either the bypass or positive shutoff feature. Similarly, the TPSSC voted 9 to 2 in favor of an operator having this option.

Various reasons were given for not prohibiting the installation of bypass EFVs. Several commenters, including an industry association, complained that RSPA proposed the positive shutoff requirement without sufficient justification in the cost/benefit study. One commenter said that additional costs of at least \$250 per utility crew would be incurred to provide backpressure downstream of the EFV to equalize the pressure and reset the valve. This commenter said these services would necessitate extra equipment, including a compressed natural gas tank or portable natural gas compressor, and additional piping, fittings, and hoses. Other commenters mentioned additional hazards to personnel in hauling and connecting compressed natural gas. Another commenter was concerned with customer inconvenience because a service call would be necessary to backpressure the EFV, delaying restoration of service.

Many commenters argued that bypass-type EFVs do not pose a significant safety risk. Commenters maintained that operators that regularly install EFVs have had no incidents resulting from use of bypass-type EFVs. Three of the largest voluntary users of EFVs (with over 300,000 EFVs in service) commented that their data did not show an incident having occurred due to a bypass-type EFV. An EFV manufacturer commented that it has no knowledge of bypass gas ever contributing to a natural gas incident. NTSB and many operators echoed these assurances.

Several commenters, including EFV users, said RSPA's concern that the bypass feature would allow irresponsible excavators to make repairs is unfounded. A few commenters said that positive shutoff EFVs would cause more safety problems than bypass-type EFVs because an excavator could sever a service line unknowingly if the positive shutoff were to completely stop the gas flow and any released odor from reaching the atmosphere. Conversely, these commenters argued that a failed service line with a bypass would continuously release gas and leave a readily detectable odor. Commenters noted other potential problems with positive shutoff EFVs. For example, a commenter in Alaska pointed out that an earthquake in the winter could cause EFVs to engage and, if positive shutoff EFVs were used, each would have to be backpressured and each customer's appliance re-lighted. During an Alaskan winter this could take days.

The Gas Research Institute (GRI) stated that its tests of EFV models showed all the tested models were affected by pressure surges of 5 psi or more and that opening, closing, or throttling a main line valve could activate an EFV, causing a false closure. The research organization said RSPA could infer from these results that the use of EFVs without the bypass could cause extended distribution service outages. GRI further stated that it knows of no reports of bypass flow in an EFV having led to or increased the severity of an accident.

GASAG commented that RSPA should allow each operator to determine the type of valves for its system. Other commenters echoed this statement. Even among those operators opposed to a mandatory rule, most said that if a rule were issued, the choice of which type of EFV to use should be left to the operator.

Comments on the Joint Commenters' Recommendation - Many commenters supported the Joint Commenters' recommendation to allow the use of a bypass-type EFV. Many commenters said it is not appropriate to depend on an EFV's design to prevent unauthorized repairs. Rather, unauthorized repairs should be controlled by stiffer penalties and better enforcement of damage prevention laws. These commenters maintained that EFVs are used to provide safety when a service line is severed, and should not be expected to perform functions beyond their intended purpose.

Many commenters said excavators who damage service lines may make unauthorized repairs regardless of whether a bypass-type EFV, a positive shutoff EFV, or no EFV is installed. RSPA recognizes the validity of this statement and that EFVs with either feature are not likely to have a substantial effect in either reducing or increasing the frequency of unauthorized repairs on a broken service line.

To dispel RSPA's concern about the potential danger of bypass-type EFVs and gas discharge into a residence, an operator explained that since natural gas is only about 0.6 times the density of air, any raw gas passing through a vented appliance would exhaust to the atmosphere through the chimney. The operator concluded that household gas ranges (or space heaters) without burner safety pilots are the only paths for raw gas to disperse through a building. The operator cited a recent study by NOVA, a Canadian chemical and pipeline company, that demonstrated that a rate of raw gas buildup in a small residence (300 square feet) would have to be about 60 cubic feet per hour to reach an ignitable level in five hours. This allows a five hour period for someone to discover the gas release before the ignitable level is reached. A bypass-type EFV allows 20 cubic feet of gas per hour. Therefore, natural gas that is passing through an EFV with a bypass would take several hours to accumulate to the ignitable range in a building.

Response--RSPA has been concerned that excavators could repair a service line break equipped with an EFV with a bypass feature, the EFV would automatically reset, and service would be restored without the operator knowing that the line had been damaged. Consequently, gas could then pass into and accumulate in a residence where the pilot light on a gas appliance had been extinguished during the service line break.

RSPA was also concerned that restoration of gas service with unvented appliances would cause a rapid buildup of the gas/air mixture to an ignitable level. Commenters have posed circumstances under which such a buildup could occur. However, in response to its questions about this problem, RSPA did not receive any information that such an incident has actually occurred. Furthermore, an EFV manufacturer and AGA have assured RSPA that bypass-type EFVs operate properly to avoid unintended gas buildup within a building. An operator with 20,000 installed bypass-type EFVs stated that bypass gas from a tripped EFV had never caused or contributed to an unsafe situation on its system. Other operators made comparable statements. The NOVA study, described above, further allays RSPA's concern. Therefore, based on the record in this rulemaking, RSPA accepts the premise that EFVs with a bypass feature are safe.

RSPA also finds acceptable the Joint Commenters' recommendation to limit gas flow to 20

cubic feet per hour for bypass-type EFVs and to 0.4 cubic feet per hour for positive shutoff-type EFVs. Because EFVs with positive shutoff features were proposed in the NPRM, RSPA did not propose EFV flow limits. However, RSPA agrees that the limits recommended by the Joint Commenters are reasonable and feasible design requirements.

Accordingly, the final rule allows either bypass or positive shutoff EFVs. Closure flow rates will be limited to 20 cubic feet per hour for the bypass-type EFV and 0.4 cubic feet per hour for the positive shutoff EFV.

Proposed Section 192.381(b)(4)--(installation testing)--RSPA proposed that upon original installation of an EFV and each time the meter is removed or replaced, the EFV be tested to determine if it closes automatically. The Joint Commenters' recommendation deleted the requirement.

Comments--All 37 commenters on this proposed requirement asked that it be deleted. Most commenters stated that the test would require that the service line be disconnected from the meter set, the service valve at the meter opened, and gas vented to the atmosphere to trip the EFV. Many commenters said that venting of the gas near the residence, or inside the residence when the meter is indoors, would be hazardous and would needlessly release methane into the atmosphere contrary to the goals of the Clean Air Act.

An EFV user stated that it does not test the EFV when replacing meters. This commenter stated that it replaces one-tenth of its meters annually and provided RSPA a summary of the steps involved in testing an EFV when a meter is replaced on an existing service. This commenter further stated it would take a two person crew a full day to test an EFV, resulting in substantial cost with no corresponding benefit. The American Public Gas Association (APGA) commented that the proposed testing would add significantly to the costs of using EFVs with no corresponding safety benefits and noted that these costs were not included in the cost/benefit analysis.

Several other commenters also noted that this proposed requirement had not been covered in the cost/benefit analysis and provided data on the costs that would be incurred for such tests. AGA estimated that 3 million services have meters removed each year, so that the tests could cost \$100 million per year, doubling RSPA's estimated installation cost of \$20 per EFV (with bypass feature). These same commenters contended that testing positive shutoff EFVs would cost even more.

AGA and other commenters concluded that such tests would require removing the service regulator or installing a fitting to allow gas to be vented upstream of the service regulator because the flow of gas passing through a service regulator may be too small to cause the EFV to trip. These commenters said that such a fitting would invite a resident to bypass the meter and steal gas.

The TPSSC voted 8 to 2 that no in-service testing of an EFV be required.

Response--Based on the comments about problems and costs of installation testing, the final rule will not require an operator to test the EFV when the EFV is installed or when the meter is removed or replaced. However, the requirement that the EFV must be manufactured and tested to an industry specification or manufacturer's written specification to ensure that the EFV functions properly up to the rated maximum operating pressure will certainly require random sample testing at the manufacturer's plant. Such sample testing is routinely conducted for all other valves in accordance with manufacturing standards.

Proposed Section 192.381(b)(5)--(automatic closure)--RSPA proposed that an EFV must close automatically if the service line is severed or if the customer's meter, regulator, or service valve is sheared off. The Joint Commenters' recommendation did not include such a requirement.

Comments--All seventeen commenters on this proposed requirement argued that it should be deleted. Most commenters stated that operators cannot guarantee that an EFV will perform as designed and warranted by the manufacturer. One commenter said that it would be difficult to comply with such a requirement because EFVs often fail to activate (due to fluid friction) in longer service line lengths of 1/2-inch pipe. Also, even if the meter set is sheared off, the flow rate may not exceed the EFV activation

flow rate because the pipe may be squeezed off at the point where it is sheared, or because there are other restrictions in the line.

One EFV user stated that costs for assuring that an EFV closes automatically would approach \$1,000 per installation. This commenter reasoned that an EFV is intended to help reduce the effects of dig-ins on a service line in the area of the street, where most excavation takes place, and requiring the EFV to do more than intended will increase costs.

The TPSSC voted 7 to 3 that the proposed requirement be changed so that an EFV "be designed to close automatically if the service line is ruptured downstream of the valve."

Response--RSPA agrees with the commenters that flow rate may not always exceed an EFV's activation flow rate because a long service line could cause excessive pressure drop, or a line could be squeezed off at the point where it is sheared, or there could be other restrictions in the line. Therefore, RSPA is not including proposed §192.381(b)(5) in the performance standards. However, the final rule (§192.381(c)) requires that an EFV be manufactured according to an industry specification or manufacturer's written specification that will establish shutoff requirements for conditions comparable to a service line being severed or a meter set being sheared off.

Proposed Section 192.381(b)(6)--(sizing)--RSPA proposed that an EFV be sized to close within 10 percent of the rated flow specified by the manufacturer. The Joint Commenters recommended a closure rate not less, and not more than 50 percent higher, than the manufacturer's specified closure flow rate.

Comments to NPRM--The 32 commenters objected to this requirement. Most commenters suggested that the proposed 10 percent tolerance be raised to 50 percent because EFVs are not precision instruments. Some commenters suggested a 25 percent tolerance. Most commenters said that EFVs with 10 percent tolerance are not commercially available and would be significantly more expensive. GASAC also opposed the requirement as excessive.

AGA provided exhaustive information showing that EFVs with a 10 percent tolerance are not commercially available and may not be possible to mass produce. AGA suggested a 50 percent tolerance and cited a Gas Research Institute (GRI) study regarding EFV performance repeatability. In 1985, GRI tested seven EFV models and found that closure flows of a single copy were repeatable within a range of 6.4 percent to 20.8 percent, whereas closure flows between two arbitrary copies of the EFVs were repeatable within the range of 15.4 percent and 87.9 percent. None of these models would have met the RSPA proposed requirements. AGA provided an EFV manufacturer's graphs showing that none of the currently available EFVs tested by that manufacturer closed within 10 percent of the rated closure.

Comments on Joint Commenters' recommendation--A member of the Joint Commenters said its analysis of service ruptures found that EFVs could close as much as 50 percent over specified closure flow and still reliably close in the type of accident EFVs are meant to address. Three other commenters agreed with the Joint Commenters' recommendation.

The TPSSC voted 7 to 4 that the rule specify that an EFV must close no lower than its rated flow and not more than 50 percent above rated closure flow.

Response--Although no EFV is currently available at an acceptable cost that will conform to a 10 percent tolerance, RSPA believes that distribution operators must have a specified closure range for an EFV that is reliable. The requirement that an EFV activate at, or 50 percent above, a specified flow level provides an acceptable closure range in accordance with currently available EFVs. Accordingly, RSPA will require an EFV be sized to close at or 50 percent above the rated closure flow rate specified by the manufacturer.

Proposed Section 192.381(c)--(flow rate verification)--RSPA proposed that the operator verify the manufacturer's rated flow for the EFV by testing at a pressure of 10 psig for the gas to be transported in the service line. The Joint Commenters recommended that the manufacturer certify the EFV meets

the manufacturer's written performance specifications, rather than place this responsibility on the operator.

Comments to NPRM--Thirty six commenters responded to RSPA's proposed requirement. Virtually all commenters objected to any operator responsibility for testing and suggested the requirement be deleted. Most commenters contended that operators cannot guarantee the performance of an EFV, but should be able to rely on the manufacturer to certify that EFVs meet the applicable standards--the approach allowed for other valves used in gas distribution systems. An EFV manufacturer also agreed that it should be the manufacturer's responsibility to test and certify EFVs. Most commenters stated that the proposed requirement would significantly increase an operator's costs.

Comments on Joint Commenters' recommendation--An industry association agreed with the recommendation to allow an operator to rely on the manufacturer's certification that EFVs meet performance standards rather than have the operator test each EFV. The association pointed out that RSPA allows such a procedure under §192.145.

Response--RSPA agrees with the commenters that the flow rate verification test should be an EFV manufacturer's responsibility, not the operator's. Thus, the final rule requires that an EFV be manufactured and tested by the manufacturer according to an industry specification, or manufacturer's written specification to ensure that each valve will perform specified minimum functions. This requirement should lead to a random EFV testing program by the manufacturer, similar to testing for other system valves. Currently, certain valves (cast iron and plastic) are installed that meet the specified manufacturing tests in §192.145. All other valves must be manufactured according to specifications in American Petroleum Institute (API) Standard 6D, which also requires random testing by the manufacturer.

Proposed Section 192.381(d)--(replacement)--RSPA proposed that if an EFV does not close automatically during installation testing or when the service line is severed, it must be replaced with an EFV that closes as required. The Joint Commenters' approach would remove any requirement to assure that an EFV closes after installation.

Comments--None of those commenting on RSPA's proposal was entirely satisfied with it. Seven commenters suggested changes that included permitting the operator the option to repair or replace an EFV that doesn't close. These commenters further proposed exempting a location from the installation requirement after two EFVs do not perform properly at that location.

One operator questioned what constitutes satisfactory closure by explaining that minor accumulations of dust and dirt can interfere with an absolute 100 percent shutoff. This commenter said that RSPA should conduct additional studies to ascertain what long-term performance characteristics can be expected and include acceptable criteria in the rulemaking.

Eight commenters said the requirement was not needed or questioned the apparent intent to require the operator to keep replacing an EFV until one performs as required. Several said that the requirement assumed that an EFV's failure to close is always the valve's fault. Commenters explained that many factors influence the operation or performance of an EFV, including changes in operating pressures and the type of gaseous mixtures flowing through the service line. They suggested the practical approach would be to allow the utility to repair and replace an EFV at its own discretion as it does with other valves in its system.

Response--RSPA's proposed requirement that an operator replace an installed EFV if it fails during installation testing or during a service line break, is no longer applicable since on-site testing and mandatory EFV installation are not being required in this final rule. Instead, an EFV must be manufactured and tested by the manufacturer according to an industry specification or manufacturer's written specification to ensure that the valve will function properly. Furthermore, replacement or removal of a defective EFV will be left to agreement between the customer and operator.

Section 192.381(e)--(manufacturing specifications)--RSPA proposed that each EFV must be

manufactured in accordance with written specifications that assure the EFV meets the manufacturer's published pressure and flow rate criteria. The Joint Commenters recommended that, instead, an EFV be manufactured and tested by the manufacturer according to a written specification to ensure that the EFV will function properly up to the maximum rated operating pressure and at all temperatures reasonably expected. The Joint Commenters further recommended that an EFV not close when pressures are below the manufacturer's minimum pressure.

Comments--Fourteen of the fifteen commenters responding to RSPA's proposed requirement were dissatisfied with the wording and recommended changes. These commenters stated that this provision appeared to shift responsibility for quality assurance from the manufacturer to the gas distribution operator who cannot assure that the manufacturer will produce valves meeting the manufacturer's published pressure and flow rate criteria. Commenters further stated that because of liability concerns there should be an industry EFV standard by which the valves should be manufactured. APGA also argued that manufacturers, not gas distribution operators, should be responsible for assuring that EFVs meet the necessary performance criteria.

Response--RSPA agrees that the proposed requirement was unclear as to who would be responsible for assuring that an EFV meets the specified performance requirements. Accordingly, the final rule clarifies that an EFV will have to be manufactured and tested by the manufacturer according to an industry specification or manufacturer's written specification to ensure that each valve meets the specified minimum performance standards.

Proposed Section §192.381(f)--(service line capacity)--RSPA proposed that service line capacity must exceed the EFV manufacturer's flow rating by 50 percent. The Joint Commenters' approach did not include a similar requirement.

Comments on NPRM--Thirty three commenters responded to this proposed requirement. Five commenters said that maintaining a flow rate at least 50 percent over the rating of the EFV would severely restrict an operator and increase costs. These commenters explained that such a high flow rate would, in many cases, require the installation of service lines larger in diameter than required for a customer's load and also preclude the insertion of plastic tubing. These persons recommended reducing the flow rate margin to 25 percent.

Most commenters opposed establishing arbitrary excess flow capacity. These commenters stated that the sizing of service lines is the operator's responsibility and that many factors must be considered, such as costs, current and future loads, the possibility of future insertions, and future maintenance requirements.

Response--RSPA agrees that a requirement to design a service line with excess capacity is not necessary for an EFV to function properly and would add unnecessary expense. Thus, the final rule does not require that service line capacity exceed the EFV manufacturer's flow rating by 50 percent. This approach is consistent with Part 192, which does not require installation of service lines larger than required to meet the customer's load.

Proposed Section 192.381(g)--(Marking)--RSPA proposed that each service line with an EFV be physically marked or labeled in the field, so that the label would be readily visible to gas company employees.

Comments on NPRM--Twelve commenters said that requiring service lines with EFVs to be identified is unnecessary and is of little benefit. One commenter, currently using EFVs and marking those service lines, said it does not believe that marking should be required. Several commenters stated that marking service lines is futile due to customers painting the meter set, weather deterioration, and vandalism. A few commenters suggested that the operator have the option to mark or record the location of these valves. However, eight commenters supported the requirement, saying it is a good safety practice for gas company operator personnel, when arriving at a residence, to know if an EFV is installed in that service line.

Comments on Joint Commenters' Recommendation--The Joint Commenters' recommendation did not include a requirement to mark services in the field. An industry association supported the Joint Commenters' approach and further recommended that the operator be allowed the option to mark services in the field or record EFV installation on its maps and records.

Response--RSPA believes it is helpful for operating personnel to know if an EFV is installed in a service line. In a service outage or emergency, service personnel arriving at a residence might respond differently depending on whether or not an EFV is installed. For example, if service personnel find that a service line has been severed and the line is marked or otherwise identified as having an EFV, service personnel should recognize that the small amount of gas escaping from the severed line is from an EFV with a bypass feature and not from a pinched service line that could suddenly release a hazardous flow of gas. With this knowledge, service personnel can initiate correct repair procedures.

Accordingly, the rule will require that an operator must mark or otherwise identify the presence of an EFV in the service line.

Proposed Section 192.381(h)--(Contaminants)--RSPA proposed that EFV installation not be required on a service line where the operator can demonstrate that contamination in the gas stream will cause an EFV to malfunction. The Joint Commenters' approach eased the operator's burden of proof by allowing the operator to document, rather than demonstrate, an unsatisfactory level of contamination.

The Joint Commenters also recommended that EFV installation not be required where the EFV would interfere with operation and maintenance activities, such as blowing liquids from the line.

Comments on NPRM--Twenty-four commenters supported the proposal to except EFV installation where prior experience indicates contaminants will cause a malfunction. Several commenters stated, however, that it is unclear how an operator could make such a demonstration. NTSB said RSPA should state the requirements necessary to claim the exemption. Several commenters said they hoped that an operator would not have to install an EFV and wait for it to fail before being able to demonstrate that contaminants should preclude installation. Two commenters argued that if an operator has experience with clogging of valves, regulators, or meters from liquids or solids in certain areas of its system, such experience should be sufficient to demonstrate that an EFV should not be installed on that part of the system.

An EFV manufacturer agreed that an EFV should not be installed where contaminants would interfere with the proper operation of an EFV, but based on its experience felt it unlikely that many systems have sufficient contaminants to cause an EFV to malfunction. GASAC commented that requests for an exemption should be subject to public disclosure and a formal review process to prevent unwarranted exemptions.

Comments on Joint Commenters' recommendation--AGA argued that the operator should determine whether to use EFVs in contaminated areas. AGA said a company might cite previous experience with service lines plugging with liquids or solids, plugging of other valves or service regulators, or knowledge of liquids or solid debris in certain parts of the system to justify not installing EFVs.

Another commenter said that iron oxide rouge from steel pipe mixed with tiny amounts of compressor fluids forms a sticky residue and prevented early model EFVs from successfully resetting following closure. The commenter said it is likely that no EFV on the market today is robust enough to withstand such contaminants and operate properly for the minimum expected life of 50 years estimated in the NPRM.

Response--RSPA agrees that an EFV is not recommended on a service line where the operator has prior experience with contaminants in the gas stream that could interfere with the EFV, cause loss of service to a residence, or cause an operator to incur undue expense in removing an inoperative EFV. An operator should, based on its previous history of service line or equipment problems from contaminants, decide whether it is appropriate to install an EFV. An operator should also consider if an EFV installed

on a service line could interfere with the operator's operation and maintenance procedures.

Regulatory Notices and Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is a significant regulatory action under Executive Order 12866. Therefore, it was reviewed by the Office of Management and Budget. In addition, the final rule is significant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979) because it concerns a matter of substantial interest to the public and Congress.

Cost/Benefit Analysis (EFV--Performance Standards)

Since the final rule does not require mandatory installation of EFVs, the performance requirements of this rule will not impact gas distribution systems not currently installing EFVs unless they begin installing EFVs. This rule will impact manufacturers of EFVs. As previously mentioned, OPS will be initiating a separate rulemaking to propose that customers be notified that EFVs are available for installation and will be installed at customer expense. This means that all gas distribution systems may soon be installing EFVs, and, thus, may be impacted by the new EFV performance standards.

The new EFV performance standards will help ensure that gas distribution companies that currently install EFVs, as well as those that begin to install EFVs on their own or because of a new notification rule, properly install these EFVs. Furthermore, these standards, by helping to ensure that newly installed EFVs are manufactured to function properly (e.g., close when they are supposed to and not close when they are not supposed to), will reduce the cost of improper closure to both gas distribution system operators and the general public. The standards will also help keep substandard valves from entering the marketplace, thereby providing some assurance of reliability to both operators and customers. As a further result of these standards, reliable EFVs installed on compatible service lines will help mitigate the consequences of incidents on service lines.

The cost/benefit study accompanying this rule estimates and compares the benefits and costs of the EFV performance standards to determine whether the standards, taken as a whole, would be cost beneficial. This study estimates the expected benefits and costs of installing one EFV and uses these estimates to calculate a benefit/cost ratio. This approach yields the same benefit/cost ratio as an approach considers the number of EFVs installed in each year, but is less complicated and cumbersome, since it does not require the estimation of (1) the number of services expected to be renewed each year, (2) the number of new services expected to be installed each year, and (3) the number of existing services that will be discontinued each year.

The primary sources of EFV data used in the analysis were (1) the written submissions to the Docket for this rulemaking made by gas distribution companies, EFV manufacturers, and other interested parties and (2) direct contacts with gas distribution companies, EFV manufacturers, and other interested parties.

The pipeline incident data used in this analysis was taken primarily from the incident and annual report submissions made to OPS by gas distribution companies. These submissions are required under the Federal pipeline safety regulations.

All dollar figures in the study are given in nominal dollars, unless otherwise indicated. Where deflation of nominal dollar figures has been performed, the Producer Price Index, All Commodities, with 1993 as the base, has been used.

As summarized below, benefits, costs, and net benefits were developed for (1) the standards for

EFV installation, (2) marking requirements, and (3) the performance requirements. The complete Benefit/Cost Analysis for EFV Performance Standards, dated August 1995, is available in the Docket.

Standards for EFV Installation

The final rule requires that an EFV installed on a single-family residential gas service that always operates at 10 psig or greater (1) must be rated by the manufacturer for use at the pressure and flow rate anticipated on the service line and (2) must meet the applicable requirements of Subparts B and D of Part 192. The final rule also recommends that an installed EFV be placed as near as practical to the main. Although this rule specifies standards for EFV installation, the installation of EFVs is not mandatory. However, if an EFV is installed, the regulatory standards will help ensure the EFV performs as expected and protects the maximum length of the most vulnerable portion of a service line.

The standards for EFV installation appear to be consistent with current industry practice. Consequently, the benefits, costs, and net benefits of the requirements are all expected to be \$0 per EFV per year.

Marking Requirements

The new marking requirement will enable gas distribution system operating and service personnel to know if a service line has an EFV installed when responding to a service outage or other service line call. This will make it possible for the personnel to safely initiate correct repair procedures. The new marking requirement is expected to reduce deaths and injuries to gas distribution system personnel, and to reduce damage to the system and nearby property.

The requirement to mark or otherwise identify services with EFVs is consistent with current industry practice. As a consequence, the benefits, costs, and net benefits are all expected to be \$0 per EFV per year.

Performance Requirements

The final rule sets performance requirements for all newly installed EFVs on single-family residential services operating at 10 psig or greater. These performance requirements are to be ensured through design, manufacturing, and testing by EFV manufacturers in accordance with an industry specification or with the manufacturer's written specifications.

The performance requirements will help ensure the reliability of EFVs. Greater reliability will result in (1) the replacement of fewer EFVs by gas distribution systems and (2) an increase in the number of EFV actuations when there are catastrophic service line breaks. The primary benefit of the new performance requirements will be an increased average reliability of the EFVs on the market. This assumes that all EFVs currently on the market are not fully consistent with the new requirements, which appears to be the case. A secondary benefit will be the assurance that the quality of EFVs will not degrade (with respect to the performance characteristics covered by the new performance requirements) in the future.

The new performance requirements for EFVs cover (1) rated maximum operating pressure, (2) the impact of external temperature, (3) sizing, (4) reduction in gas flow upon closure, and (5) inappropriate closure. The requirements for rated maximum operating pressure, the impact of external temperature, and sizing appear to be consistent with current industry practice. The benefits of the new performance requirements are expected to be between \$15,675 and \$1,254 per year. The costs are expected to be \$0 per year. Consequently, the net benefits are expected to be between \$15,675 and \$1,254 per year.

The net benefits calculated for the performance requirements do not include (1) the costs related to the redesign of EFVs, (2) the full monetary value of the benefits accruing to gas distribution companies that currently install EFVs, and (3) the monetary value of the benefits that will accrue to gas distribution companies that install EFVs in the future.

Present Value of the Net Benefits

The net benefits for the new performance requirements are the sum of the net benefits of (1) EFV installation standards, (2) the marking requirements, and (3) the EFV performance requirements. Since the net benefits for the EFV installation standards and for the marking requirements are expected to be greater than \$0 per year, while the net benefits for the new performance requirements are expected to be between \$15,674 and \$1,254 per year, the total net benefits for the EFV requirements specified in the final rule will be, at most, greater than \$15,674, and, at least, greater than \$1,254 per year. Discounted over 50 years (the life of an EFV assumed by OPS) using a 7 percent discount rate, the present value of the total net benefits is expected to be, at most, greater than \$223,768, and, at least, greater than \$17,901. Since costs are \$0, their present value is also \$0 and the cost-to-benefit ratio is 0 at both the upper and lower bounds of the benefits.

Conclusion

The positive present value of the expected net benefits, as well as the cost-to-benefit ratio of 0 at both the upper and lower bounds on the benefits, indicate that the performance standards presented in the final rule will be cost beneficial.

Regulatory Flexibility Act

Based on costing assumptions discussed in the Cost/Benefit Analysis, this rule will not have an undue impact on small operators. Therefore, I certify under section 605 of the Regulatory Flexibility Act that the action will not have a significant economic impact on a substantial number of small entities.

E.O. 12612

This rulemaking action will not have substantial direct effects on states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612 (52 FR 41685; October 30, 1987), RSPA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

National Environmental Policy Act

RSPA has analyzed this action for purposes of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and has determined that this action would not significantly affect the quality of the human environment. An Environmental Assessment and a Finding of No Significant Impact are in the docket.

List of Subjects in 49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, Part 192 is amended as follows:

PART 192--[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113 and 60118; 49 CFR 1.53. * * * *

2. Part 192 is amended by adding §192.381 to subpart H to read as follows:

§192.381 Service lines: Excess flow valve performance standards.

(a) Excess flow valves to be used on single residence service lines that operate continuously throughout the year at a pressure not less than 10 psig must be manufactured and tested by the manufacturer according to an industry specification, or the manufacturer's written specification, to ensure that each valve will:

- (1) Function properly up to the maximum operating pressure at which the valve is rated;
 - (2) Function properly at all temperatures reasonably expected in the operating environment of the service line;
 - (3) At 10 psig:
 - (i) Be sized to close at, or not more than 50 percent above the rated closure flow rate specified by the manufacturer; and
 - (ii) Upon closure, reduce gas flow--
 - (A) For an excess flow valve designed to allow pressure to equalize across the valve, to no more than 5 percent of the manufacturer's specified closure flow rate, up to a maximum of 20 cubic feet per hour; or
 - (B) For an excess flow valve designed to prevent equalization of pressure across the valve, to no more than 0.4 cubic feet per hour; and
 - (4) Not close when the pressure is less than the manufacturer's minimum specified operating pressure and the flow rate is below the manufacturer's minimum specified closure flow rate.
- (b) An excess flow valve must meet the applicable requirements of Subparts B and D of this part.
- (c) An operator must mark or otherwise identify the presence of an excess flow valve in the service line.
- (d) An operator should locate an excess flow valve beyond the hard surface and as near as practical to the fitting connecting the service line to its source of gas supply.
- (e) An operator should not install an excess flow valve on a service line where the operator has prior experience with contaminants in the gas stream, where these contaminants could be expected to cause the excess flow valve to malfunction or where the excess flow valve would interfere with necessary operation and maintenance activities on the service, such as blowing liquids from the line.

Issued in Washington, DC, on June 14, 1996. D.K. Sharma, Administrator, Research and Special Programs Administration.

[FR Doc. 96-15564 Filed 6-19-96; 8:45 am]

BILLING CODE 4910-60-P

Research and Special Programs
Administration

49 CFR Part 192

[Docket No. PS-112; Amendment 192-80]

RIN 2137-AB87

Excess Flow Valve—Performance
Standards

AGENCY: Research and Special Programs
Administration. (RSPA), DOT.

ACTION: Final rule; response to petition
for reconsideration.

SUMMARY: This action concerns a petition from the American Gas Association (AGA) to reconsider and clarify certain provisions of the excess flow valve (EFV) performance standards regulations. AGA's request to clarify the rule by deleting language in the regulation concerning siting of the EFV and locating the EFV beyond the hard surface is granted because some operators are apparently misinterpreting this language. AGA's request to delete the recommended installation standards from the performance standards rule and include them in the notification rulemaking is denied because such standards are applicable to an EFV's safe and reliable operation. AGA's request to allow an operator to determine how to identify the presence of an EFV in the service line is denied because the final rule already allows the operator this flexibility.

EFFECTIVE DATE: February 18, 1997.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366-4371, regarding this final rule or the Dockets Unit, (202) 366-3046, regarding copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 1996 (61 FR 31449), RSPA published regulations (49 CFR 192.381) prescribing performance standards for EFVs used to protect single-residence service lines. In a petition for reconsideration and request for clarification dated July 17, 1996, AGA asked RSPA to reconsider several provisions of this final rule on EFV performance standards. On July 30, 1996, OPS and AGA met to discuss the issues in the petition.

AGA Petition for Reconsideration

AGA contended that the marking requirement (§ 192.381(c)) and recommendations concerning where to locate the EFV (§ 192.381(d)) and whether to install an EFV in certain circumstances (§ 192.381(e)) are installation standards and should not have been included in the final rule on EFV performance standards. AGA maintained that these requirements should have been included in RSPA's notice of proposed rulemaking on EFV customer notification (61 FR 33476; June 27, 1996), and subject to notice and comment.

Response: RSPA disagrees that the marking requirement and the recommendations on locating and installing an EFV are misplaced and were not subject to notice and comment. RSPA established the EFV performance standards as minimum requirements for an EFV to perform safely and reliably when installed in a gas piping system. The marking requirement and the recommendations on locating and installing an EFV were included in the rule because RSPA considers them integral to an EFV's performance.

RSPA recommended the circumstances in which an operator should not install an EFV and where the operator should locate the EFV to address concerns raised during the EFV rulemaking process. Because these recommendations addressed comments that were made during the EFV rulemaking process, although not specifically proposed, RSPA considered them to be within the scope of the EFV rulemaking. To address commenters' concern about placing an EFV in a system where contaminants could cause a malfunction, RSPA included a recommendation that operators consider this factor when installing an EFV. Similarly, to address concerns about protecting the maximum length of service line, as well as comments about logistical and economic difficulties in installing or removing an EFV beneath a hard surface, RSPA recommended that

an operator locate the EFV beyond the hard surface and as near the gas supply main as practical. Both recommended standards affect an EFV's operation and reliability, and are better suited to the performance standards rule than the notification rulemaking. The proposed notification rule proposes to require operators to notify customers about the availability, safety benefits, and cost associated with EFV installation, issues not related to an EFV's operation.

The requirement to identify the presence of an EFV in a service line by marking or other means is intended to alert personnel servicing the line to its presence. Although not technically a performance standard, the requirement is better placed in the performance standards rule because it helps to ensure that a service line with an EFV is properly serviced.

Accordingly, for the reasons discussed, RSPA does not adopt AGA's suggestion to amend the final rule by deleting these sections. However, AGA's additional concerns about the recommendation to locate an EFV beyond the hard surface are addressed in section III of this document.

II. AGA requested RSPA to clarify the requirement to mark, or otherwise identify, the presence of an EFV in a service line (§ 192.381(c)). AGA expressed concern that marking would notify the public of the valve's existence to the detriment of the public's safety. AGA suggested that RSPA amend this requirement to allow each operator to determine the method to identify the presence of an EFV in the service line.

Response: By requiring an operator to mark or otherwise identify the presence of an EFV in a service line, the final rule intended for each operator to determine how to identify the presence of an EFV to personnel servicing the line. The language in the rule left to the operator's discretion whether to identify the EFV's presence by marking the line, by indicating on maps and records, or by using some other method. When, during the meeting, OPS explained that this language was not intended to limit an operator, AGA agreed that further clarifying language was not needed. Thus, we do not see any necessity for modifying the rule.

III. The final rule (§ 192.381 (d)) recommended that an operator locate an EFV beyond the hard surface and as near as practical to the fitting connecting the service line to its source of gas supply. In its petition AGA said that the language specifying that an EFV should be located beyond the hard surface could increase the costs of installation and reduce the safety benefits of EFVs. AGA explained that

under the three most common installation and replacement methods (trenching, boring, insertion), an additional excavation or cutting and resealing of the pipe would be needed to accommodate the requirement. Furthermore, the effect of this requirement would be to install the EFV further from the service line than necessary.

Response: RSPA intended in the final rule that if an EFV were installed in a service line, it would be located as near the gas supply main as practical. RSPA further recommended that the EFV be located beyond the hard surface to alleviate concerns raised during the rulemaking process that installing or removing an EFV under a hard surface would result in increased installation or removal costs. To avoid any confusion for the operator about where best to locate an EFV, RSPA is deleting the language "beyond the hard surface" from the rule.

RSPA continues to believe that if an EFV is installed, it is placed as near the source of gas supply as practical to ensure the EFV protects the maximum length of service line. Therefore, we are further amending the section to clarify the original intent of the rule by changing "should locate" to "shall locate the EFV as near as practical to the fitting connecting the service line to its source of gas supply." The clarification continues to allow the operator to decide if such an installation is practical.

IV. AGA argued in its petition that the language requiring that the EFV be "sized to close at . . ." (§ 192.381(a)(3)(II)), has caused confusion among operators. AGA explained that because sizing is usually done by an engineer, not the manufacturer, an operator could not ensure that the manufacturer had sized the valve correctly. AGA recommended RSPA delete this language or clarify who bears responsibility for ensuring the EFV is correctly sized.

Response: In RSPA's experience, the language concerning sizing should not cause confusion. Nonetheless, to preclude this possibility, RSPA is deleting the language "[b]e sized to . . ." from § 192.381(a)(3)(II).

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Office of Management and Budget (OMB) does not consider this final rule to be a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, OMB did not review this final rule. Also, DOT does not

consider this final rule to be significant under its regulatory policies and procedures (44 FR 11034; February 25, 1979). Because this final rule merely clarifies an existing rule, the economic impact is too minimal to warrant an evaluation of costs and benefits. However, an economic evaluation of the original final rule is available for review in the docket.

Executive Order 12812

We analyzed this final rule under the principles and criteria in Executive Order 12812 ("Federalism"). The final rule does not have sufficient federalism impacts to warrant preparation of a federalism assessment.

Regulatory Flexibility Act

I certify, under Section 605 of the Regulatory Flexibility Act, that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule does not modify the paperwork burden that operators already have. Therefore, a paperwork evaluation is unnecessary.

List of Subjects in 49 CFR Part 192

Natural gas; Pipeline safety; Reporting and record keeping requirements.

RSPA amends 49 CFR part 192 as follows:

PART 192—(AMENDED)

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60106, 60109, 60110, 60112, and 60118; 49 CFR 1.52.

2. Section 192.381 is amended by revising paragraphs (a)(3)(I), and (d) to read as follows:

§ 192.381 Service lines: Excess flow valve performance standards.

- (a) . . .
- (3) At 10 psig:
 - (i) Close at, or not more than 50 percent above, the rated closure flow rate specified by the manufacturer; and
 - (d) An operator shall locate an excess flow valve as near as practical to the fitting connecting the service line to its source of gas supply.

Issued in Washington, DC, on January 14, 1997.

Kelley S. Coyner,

Deputy Administrator.

(FR Doc. 97-1249 Filed 1-16-97 8 45 am)
BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 191, 192 and 193

Docket No. RSPA-97-0006; Ann. No. 191-12; 192-97; 193-97

RIN 2137-AC08

Pipeline Safety Regulations Implementing Hazardous or Understanding With the Department of the Interior

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Direct final rule.

SUMMARY: This direct final rule (DFR) would implement a provision of a December 10, 1996, Memorandum of Understanding (MOU) between the Department of the Interior (DOI) and the Department of Transportation (DOT) regarding Outer Continental Shelf (OCS) pipelines by redesignating the point at which an OCS pipeline is subject to RSPA regulations. Under this rule, RSPA would establish and enforce design, construction, operation, and maintenance regulations and investigate certain accidents for all pipelines located downstream of the point at which operating responsibility for the pipelines transfers from a producing operator to a transporting operator.

DATES: This direct final rule takes effect March 18, 1998. If RSPA does not receive any adverse comment or notice of intent to file an adverse comment by January 20, 1998 the rule will become effective on the date specified. RSPA will issue a subsequent notice in the Federal Register by February 17, 1998, after the close of the comment period, to confirm that fact and reiterate the effective date. If an adverse comment or notice of intent to file an adverse comment is received, RSPA will issue a timely notice in the Federal Register to confirm that fact and to withdraw the DFR in whole or in part. RSPA may then incorporate the adverse comment into a subsequent DFR or may publish a notice of proposed rulemaking.

ADDRESSES: Written comments on the subject of this DFR may be submitted to

the Dockets Facility, U.S. Department of Transportation, 400 Seventh Street, SW, Plaza 401, Washington, DC 20590-0001. Comments should identify the docket number of this DFR, RSPA-97-0006. Persons should submit the original and one copy. Persons wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard. Alternatively, comments may be submitted via e-mail to ls.barrick@rspa.dot.gov. The Dockets facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, (202) 365-6523 or e-mail ls.barrick@rspa.dot.gov regarding the subject matter of this DFR, or the Dockets Facility, (202) 366-5046, regarding copies of this DFR or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

Under an MOU dated May 6, 1976, RSPA regulated hazardous liquid, carbon dioxide, and natural gas

pipelines located downstream of the outlet flange of each facility where hydrocarbons are first produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is further downstream. DOI regulated those pipelines located upstream of this point. The Departments agreed to change this regulatory boundary with the signing of the December 10, 1996, MOU. The 1996 MOU was the result of negotiations that began in the summer of 1993, which included a high degree of participation from the regulated industry. RSPA and DOT's Minerals Management Service (MMS) solicited public comments on a draft MOU through a joint Federal Register notice (60 FR 27346; May 24, 1995). The notice also announced a public meeting at the MMS Gulf of Mexico regional office in New Orleans, Louisiana, on August 1, 1995, to discuss the proposal. Over 70 people attended the meeting, which generated over 100 pages of comments from natural gas and petroleum trade organizations, natural gas and oil exploration and production companies, transmission companies, offshore construction companies, and industry consultants. Twenty-three individuals and organizations submitted written comments on the Federal Register notice. A transcript of this meeting and copies of the comments are available in Docket No. RSPA-97-0006.

In May 1996, RSPA and MMS met with an industry workgroup representing OCS oil and natural gas producers and transmission pipeline

operators. The workshop proposed that the agencies allow individual operators of production and transportation facilities to define the boundaries of their respective facilities. They suggested that producers and transporters can best make such decisions based on the unique operating characteristics of each facility. Under this rule, RSPA would establish and enforce design, construction, operation, and maintenance regulations and investigate certain accidents for all OCS transportation pipelines beginning downstream of the point at which operating responsibility transfers from a producing operator to a transporting operator. Producing operators are companies which are engaged in the extraction and processing of hydrocarbons on the OCS. Transporting operators are companies which are engaged in the transportation of those hydrocarbons.

Intent of the Rule

The intent of this rule is to require OCS production and transportation pipeline operators to designate the specific points on their pipelines where operating responsibility transfers from a producing operator to an adjoining transporting operator. The rule would amend 49 CFR parts 191, 182 and 185. Generally, operations will have 60 days after the date the rule becomes final to durably mark the specific points at which operating responsibility transfers. In most cases, the specific transfer points will be easily identifiable because of specific valves or flanges where the adjoining operations connect, or because of differences in pipe used by adjoining operators to protect and maintain pipeline coatings or surfaces. For those instances in which the transfer points are not identifiable by a durable marking, each operator will have 180 days after the final rule becomes effective to identify the transfer points on a schematic. The 180-day period will give operators time to identify the transfer points during routine maintenance. If it is not practicable to durably mark a transfer point, and the transfer point is located above water, then the operator must depict the transfer point on a schematic maintained near the transfer point. Some transfer points may be located underwater. In such cases, the operator must identify the transfer point on a schematic which must be maintained at the nearest upstream facility and provided to RSPA upon request. For those instances in which adjoining operators do not or can not agree on a transfer point, RSPA's Office of Pipeline Safety (OPS) and MDAS will

make a joint determination of the boundary.

The OPS and MDAS may, through their enforcement agencies and in consultation with the affected parties, agree to exceptions to the general boundary description (operations transfer point) on a facility-by-facility or area-by-area basis. Operators may also petition OPS and MDAS for exceptions to the general boundary description.

Concurrent to service: A pipeline previously used in service and not subject to DOT regulations which comes under these regulations as a result of this rulemaking qualifies for use under the DOT regulations if the operator prepares and follows a written procedure to carry out the requirements of 49 CFR 182.14 or 183.5 (Convention to service subject to this part). Pipeline segments designed and constructed under DOT regulations before March 19, 1980 may continue to operate under DOT design and construction requirements until significant modifications or repairs are made to those segments. After March 19, 1980 DOT operational and maintenance requirements will apply to those segments.

Rulemaking Analysis

The December 1986 MOU redrafted the DOT/DOI regulatory boundary definition from the OCS facility where hydrocarbons are "first produced, separated, dehydrated, or otherwise processed" to the point at which "operating responsibility for the pipeline transfers from a producing operator to a transporting operator." The MOU places, to the greatest extent practicable, producer-operated pipelines under DOI regulation and transporter-operated pipelines under DOT regulation. The changes in this rule would substantially reduce the regulatory burdens currently caused by the overlapping Federal regulatory responsibilities and the inconsistencies between the requirements. The changes will substantially increase the efficiency of governmental resources on the OCS without compromising safety.

Executive Order (E.O.) 12868

RSPA reviewed this rule under E.O. 12868 and determined that this is not an economically significant rule. The Office of Management and Budget (OMB) has not asked to review this rule under E.O. 12868.

Regulatory Flexibility Act

Oil and gas and production and transportation companies are classified under Standard Industrial Codes (SICs) by the Census Bureau. The Small

Business Administration further

classifies "small businesses" in the various offshore sectors as follows: (1) Oil and gas producers that have fewer than 500 employees; (2) liquid pipeline companies that have fewer than 1,500 employees; (3) natural gas pipeline companies that have gross annual receipts of \$25 million or less; and (4) offshore oil and gas field exploration service or production service companies that have gross annual receipts of \$5 million or less. There are many companies on the OCS that are "small businesses" by these definitions. However, the technology necessary for conducting offshore oil and gas exploration and development activities is very complex and costly, and most entities that engage in offshore activities have considerable financial resources well beyond what would normally be considered "small business." These entities customarily conduct their operations by contracting with offshore drilling or service companies and therefore tend to have relatively few employees compared to the considerable financial resources of their operations.

This rule would affect a substantial number of "small entities," however, the economic effects of the rule would not be significant. The economic effects on the oil and gas production and transportation companies directly affected by the rule would be insignificant because of the mutual costs that operators incur during the first year that the rule is implemented. In that year, offshore producers would have to identify all points on their pipelines at which operating responsibility transfers from a producer to a transporter. In succeeding years there would be virtually no economic impact resulting from the rule. The offshore service companies would be indirectly affected by the rule through their contractual relationships with the primary producing and transporting companies—they would not be directly regulated in any way. This rule would not impose any new restrictions on small pipeline service companies or manufacturers, nor will it cause their business practices to change. To the extent that this rule might eventually cause some of the relatively larger OCS operators to make modifications to their pipelines, it may have a minor beneficial effect of increasing demand for the services and equipment of smaller service companies and manufacturers.

Paperwork Reduction Act

This rule contains a collection of information which RSPA is evaluating

to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of RSPA's continuing effort to reduce paperwork and respondent burden, RSPA invites the public and other Federal agencies to comment on any aspect of the reporting burden in 49 CFR 192 and 193 as amended by this DFR. Submit your comments to the Office of Information and Regulatory Affairs: OMB: Attention: Desk Officer for the Department of Transportation (Doclet No. RSPA 97-2096); Washington, D.C. 20503. Send a copy of your comments to L.E. Hartzel, Room 2135, 400 Seventh Street, Washington, DC 20580-0001. You may obtain a copy of the supporting statement for the collection of information by contacting the Doctests Facility.

OMB may make a decision to approve or disapprove this collection of information after 30 days from receipt of our request. Therefore, your comments are best assured of being considered by OMB if OMB receives them within that time period. However, RSPA will consider all comments received during the comment period for this direct final rule.

The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The title of this collection of information is "49 CFR 191, 192 and 193 Pipelines Safety: Regulations Implementing Memorandum of Understanding with the Department of the Interior."

The collection of information in the DFR and for each transporter operating a pipeline consists of: (1) Reviewing existing pipeline maps, (2) conducting and agreeing with operators of adjoining production pipelines segments concerning the locations of specific transfer points, and (3) either marking directly on each pipeline or depicting on a schematic the specific point on each pipeline where operating responsibility transfers from the producing operator to a transporting operator. As stated above under the "Instant of the Rule" section, specific transfer points will be easily identifiable in most cases, either because of specific valve or flange where the adjoining operators connect, or because of differences in paint that adjoining operators use to protect and maintain pipeline coatings or sections.

Generally operators will have until 60 days after the date the rule becomes final to durably mark the points at

which operating responsibility transfers. For those relatively few instances where the transfer points are not identifiable by durable marking, operators will have 180 days after the date the rule becomes final to identify, on a schematic, the transfer points. The requirement to identify the boundary is mandatory. The RSPA will use the information to determine the demarcation where DOT will establish and enforce design, construction, operation, and maintenance regulations and investigate certain accidents, as distinguished from MD&S responsibilities.

In calculating the burden, RSPA assumed that respondents perform most of the requirements and maintain records in the normal course of their activities, such as painting their pipelines and maintaining valves and flanges. RSPA considers these to be usual and customary practices and did not include them in the burden estimate. Commenters are invited to provide information if they disagree with this assumption and they should tell RSPA what are the burden hours and costs imposed by this collection of information (i.e., marking of transfer points).

The regulated community consists of approximately 160 Federal OCS oil and gas producers and 70 transportation pipeline operators. There are approximately 3,000 points where operating responsibility for pipelines transfers from a producer to a transporter. The RSPA assumes from discussions with MD&S and the operators that about 2,400 (representing 80 percent) of these transfer points are already marked. Therefore, this rulemaking would require a one-time identification and marking of about 600 points where operating responsibility for pipelines transfers from a producer to a transporter. For the 2,400 transfer points that are already marked, there could be no information burden. The 600 unmarked transfer points, on the other hand, would require widely-varying times for identification depending on whether a painted line or a schematic was used to identify the transfer point.

The public reporting burden for this information collection requirement is estimated to average 5 hours per response for each transfer point. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the required marking. Based on 600 unmarked transfer points, RSPA estimates that the total one-time burden of this collection of information to be 3,000 hours total. The average

annualized burden over a 3-year period would be 1,000 hours. Based on \$35 per hour, the total burden hour cost to respondents is estimated to be \$35,000 annually.

Takings Implication Assessment

The DOT certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12830, Government Action and Interference with Constitutionally Protected Property Rights.

Unfunded Mandates Reform Act of 1995

This rule does not contain any unfunded mandates to State, local, or tribal governments, nor would it impose significant regulatory costs on the private sector. Anticipated costs to the private sector will be far below the \$100 million annual threshold that was established by the Unfunded Mandates Reform Act.

E.O. 12868

The DOT has certified to OMB that this regulation meets the applicable civil justice reform standards provided in Sections 3(a) and 3(b)(2) of E.O. 12868.

National Environmental Policy Act

The DOT has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects

49 CFR Part 191

Gas, Pipeline safety. Reporting and recordkeeping requirements.

49 CFR Part 192

Pipeline safety. Reporting and recordkeeping requirements.

49 CFR Part 193

Asbestos emissions. Carbon dioxide. Petroleum. Pipeline safety. Reporting and recordkeeping requirements.

For the reasons set out in the preamble, RSPA amends 49 CFR parts 191, 192 and 193 as follows:

PART 191—(AMENDED)

1. The authority citation for part 191 continues to read as follows:

Authority: 49 U.S.C. 5121, 50302, 50303, 50304, 50306, 50317, 50318, and 50324; and 49 CFR 1.131.

2. Section 191.1 is amended by adding paragraph (b)(3) to read as follows:

§ 191.1 Scope.

(b) * * *

(3) On the Outer Continental Shelf upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator.

3. Section 191.3 is amended by adding a definition in alphabetical order to read as follows:

§ 191.3 Definitions.

* * *

Outer Continental Shelf means all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

PART 192—(AMENDED)

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5101, 50702, 50704, 50708, 50709, 50710, 50711, and 50712; 49 CFR 1.53.

2. Section 192.1 is amended by adding paragraph (b)(6) to read as follows:

§ 192.1 Scope of part.

(b) * * *

(6) On the Outer Continental Shelf upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator.

3. Section 192.3 is amended by adding a definition in alphabetical order to read as follows:

§ 192.3 Definitions.

* * *

Outer Continental Shelf means all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

4. Section 192.10 is added to read as follows:

§ 192.10 **Outer continental shelf pipelines.** Operators of transportation pipelines on the Outer Continental Shelf (as

defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331) must

identify on all their respective pipelines the specific points at which operating responsibility transfers to a producing operator. For those instances in which the transfer points are not identifiable by a durable marking, each operator will have until September 15, 1998 to

identify the transfer points. If it is not practicable to durably mark a transfer point and the transfer point is located above water, the operator must depict the transfer point on a schematic located near the transfer point. If a transfer point is located subsea, then the operator must identify the transfer point on a schematic which must be maintained at the nearest upstream facility and provided to RSPA upon request. For those cases in which adjusting operations have not agreed on a transfer point by September 15, 1998 the Regional Director and the MADS Regional Supervisor will make a joint determination of the transfer point.

PART 195—(AMENDED)

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5101, 50702, 50704, 50708, 50709, 50710, and 49 CFR 1.53.

2. Section 195.1 is amended by adding a new paragraph (b)(6) and redesignating paragraphs (b)(6) through (b)(8) as paragraphs (b)(7) through (b)(9) to read as follows:

§ 195.1 Applicability.

(b) * * *

(6) Transportation of hazardous liquid or carbon dioxide in Outer Continental Shelf pipelines which are located upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator.

3. Section 195.2 is amended by adding a definition in alphabetical order to read as follows:

§ 195.2 Definitions.

* * *

Outer Continental Shelf means all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

4. Section 195.9 is added to read as follows:

§ 195.9 **Outer continental shelf pipelines.**

Operators of transportation pipelines on the Outer Continental Shelf must identify on all their respective pipelines the specific points at which operating responsibility transfers to a producing operator. For those instances in which the transfer points are not identifiable by a durable marking, each operator will have until September 15, 1998 to identify the transfer points. If it is not practicable to durably mark a transfer point and the transfer point is located above water, the operator must depict the transfer point on a schematic maintained near the transfer point. If a transfer point is located subsea, then the operator must identify the transfer point on a schematic which must be maintained at the nearest upstream facility and provided to RSPA upon request. For those cases in which adjusting operations have not agreed on a transfer point by September 15, 1998 the Regional Director and the MADS Regional Supervisor will make a joint determination of the transfer point.

Issued in Washington D.C. on November 12, 1997.

Richard B. Fisher,

Assistant Administrator for Pipeline Safety.
[FR Doc. 97-30718 Filed 11-19-97; 6:45 am]
GULF OCS 97-03-0

where operating responsibility transfers to a transporting operator. Also, in response to comments from interested persons, RSPA has clarified the applicability of the direct final rule.

DATES: The effective date of the direct final rule published November 19, 1997, at 62 FR 61662 is confirmed to be March 19, 1998.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick at (202) 366-5523, or at leherrick@rspa.dot.gov.

SUPPLEMENTARY INFORMATION: With the signing on December 10, 1996, of a memorandum of understanding (MOU), the Department of the Interior (DOI) and DOT agreed to a new division of their respective safety/regulatory responsibilities over offshore pipelines on the OCS (62 FR 7037; February 14, 1997). Under the MOU, DOT will establish and enforce design, construction, operation, and

maintenance regulations and investigate certain accidents for all pipelines located downstream of the point at which operating responsibility for the pipelines transfers from a producing operator to a transporting operator. DOI will regulate those producer-operated OCS pipelines located upstream of this point. The MOU also provides that individual operators of production and transportation facilities may define the boundaries of their respective facilities.

RSPA published a direct final rule amending the DOT pipeline safety regulations in 49 CFR parts 191, 192, and 195 consistent with the MOU (62 FR 61662; November 19, 1997). The direct final rule excluded from these DOT regulations OCS pipelines

upstream from the point where operating responsibility transfers from a producing operator to a transporting operator. Also, operators were required to durably mark the specific points at which operating responsibility transfers or, if it is not practicable to durably mark a transfer point, to depict the transfer point on a schematic maintained near the transfer point.

The procedures governing issuance of direct final rules are in 49 CFR 190.339. These procedures provide for public notice and opportunity for comment subsequent to publication of a direct final rule. They also provide that unless an adverse comment or notice of intent to file an adverse comment is received within a specified comment period, the Administrator will issue a confirmation document advising the public that the direct final rule will either become effective on the date stated in the direct final rule or at least 30 days after the publication date of the confirmation. If an adverse comment or notice of intent

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 191, 192, and 195

(DocId: No. RSPA 87-2006; Amdt. 191-12; 192-61; 195-69)

RIN 2137-AC99

Pipeline Safety: Regulations Implementing Memorandum of Understanding With the Department of the Interior

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Confirmation of effective date of direct final rule.

SUMMARY: This document confirms the effective date of the direct final rule that excluded from DOT safety regulations producer-operated gas and hazardous liquid pipelines located on the Outer Continental Shelf (OCS) upstream from

to file an adverse comment is received, RSPA will issue a timely ruling in the Federal Register to confirm that fact and withdraw the direct final rule in whole or in part. According to the preamble, an adverse comment is one that explains why the rule would be inappropriate, including a challenge to the rule's underlying premises or approach, or would be ineffective or unenforceable without a change. Comments that are frivolous or insubstantial are not adverse. A comment recommending a rule change in addition to the rule is not an adverse comment, unless the commenter states why the rule would be ineffective without the additional change.

As discussed below, we received six comments on the direct final rule. We do not consider any of the comments to be adverse comments under the direct final rule procedures. Consequently, we are publishing this document to confirm the effective date announced in the direct final rule.

The Chevron Pipe Line Company and the American Petroleum Institute commended the action. However, the other four commenters, through supportive of the direct final rule in concept, expressed concerns about application of the new rule.

The Southern Natural Gas Company and its affiliate, Sea Robin Pipeline Company (hereafter collectively "SONAT"), noted that new rules intended to exclude certain producer-operated OCS pipelines from DOT regulations would conflict with existing rules that already exclude certain offshore pipelines. Because the direct final rule did not alter these existing rules, SONAT recommended changes to them to remove the conflict. For example, SONAT suggested we revise 49 CFR 192.1(b)(1), which excludes from DOT regulations offshore gas pipelines located upstream from certain production facilities, to apply only shoreward of the OCS.

In its comments, SONAT did not describe the conflict it perceived, and we believe that none exists. The new OCS exclusionary rules are fully compatible with the existing offshore exclusionary rules. Each exclusion applies independently. So, if a producer-operated OCS pipeline is excluded from DOT regulation by a new OCS exclusionary rule, that exclusion is not negated if the pipeline is not also excluded by an existing offshore exclusionary rule. Further, the existing offshore exclusionary rules are needed to maintain the jurisdictional limits of DOT regulations over those producer-operated offshore pipelines not covered by the MOU and the direct final rule.

In addition, SONAT suggested we revise the new OCS exclusionary rules, each of which was inserted in a list of other exclusions, to be "grammatically harmonious" with the list. SONAT recommended word changes to make the new entries responsive to the introductory clause of the list. Although we appreciate the need for these suggested changes, they are editorial in nature and not essential to make the direct final rule effective or substantively valid. We will make the necessary editorial changes in a future rulemaking action.

Finally, SONAT pointed out that the new rules on identifying transfer points did not provide a compliance deadline for installing durable markers. The preamble of the direct final rule mentioned that operators would have 60 days after the rules become final to durably mark transfer points. SONAT suggested we revise the rules so the deadline for marking transfer points not identifiable by durable marking—September 15, 1998—applies to marking all identified transfer points. This single deadline, SONAT said, would eliminate confusion, simplify the rules, and provide enough time for consultation and proper marking. We agree that the rule text is somewhat at variance with the preamble, but not in a way that increases the burden on operators. In the absence of a specific deadline for installing durable markers, we construe the new rules on identifying transfer points to require that all identified points be marked, either durably or schematically, by September 15, 1998.

The Offshore Operators Committee, representing 87 companies, and the Chevron U.S.A. Production Company commented on a situation not covered by the MOU or the direct final rule: namely, producer-operated pipelines that run from the OCS to state territory with no transfer of operating responsibility. There is no question the state portion of these producer-operated pipelines comes under DOT regulations, but these commenters thought the direct final rule was unclear whether DOT or DOI regulations cover the OCS portion. The commenters asked that we revise the direct final rule to clarify that DOT regulations cover the OCS portion of the producer-operated pipelines so that DOT regulations apply to the entire pipeline.

The direct final rule applies only to OCS pipelines on which there is a transfer of operating responsibility from a producing operator to a transporting operator. So producer-operated OCS pipelines regulated by DOT on which there is no transfer of operating responsibility will remain under DOT

regulation and may also be subject to DOI regulation. But DOI has no authority to modify its MOU implementation rule to address the potential double regulation of pipelines extending downstream (shoreward) of production facilities on the OCS. Also, the commitment of DOT and DOI to develop more compatible regulations should serve to mitigate regulatory problems that arise when OCS pipelines cross the jurisdictional boundary between the two agencies. Therefore, although the commenters' suggestions are beyond the scope of the direct final rule and are not necessary to make the rule effective, in view of the cooperative efforts of the two agencies, we believe the difficulties the commenters foresee will be minimal.

Only the Administrator of RSPA has been delegated authority to issue final rules on pipeline safety. The direct final rule on OCS pipelines was issued by the Associate Administrator for Pipeline Safety. My signature below affirms that I subscribe to that action and to the direct final rule.

Issued in Washington, D.C. on March 10, 1998.

Kelley S. Cuyper,

Acting Administrator.

(FR Doc. 98-6628 Filed 3-13-98; 8:45 am)
Gulfco 0004 0914-00

by closing automatically if a service line breaks, thus, mitigating the consequences of service line failures. This regulation would enhance public awareness of the potential safety benefits from installing an EPV.

DATES: This final rule takes effect February 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mike M. Linnell, telephone (202) 366-4571, or e-mail: mike.linnell@epva.dot.gov, regarding the subject matter of this final rule, or the Dockets Unit (202) 366-4453 for copies of this final rule or other material in the docket referenced in this rule.

SUPPLEMENTARY INFORMATION:

Background

During routine excavation activities, excavators often sever gas service lines causing loss of life, injury, or property damage by fire or explosion. EPVs restrict the flow of gas by closing automatically if a service line breaks, and mitigate the consequences of service line failures. Despite efforts, such as damage prevention programs, to reduce the frequency of excavation-related service line incidents on natural gas service lines, such incidents persist and result in death, injury, fire, or explosion. Because damage prevention measures are not foolproof, RSPA has sought an appropriate means to mitigate the consequences of these incidents. The National Transportation Safety Board (NTSB) and others have recommended EPVs to mitigate the consequences of such incidents, thus, saving lives and lessening the extent of property damage.

By having an operator inform its customers of the availability of EPVs for installation at a cost and the resultant safety benefits, customers can decide if they want the operator to install an EPV on the service line. Notification giving information on EPVs may encourage EPV use and, by encouraging such use, may lead to reduced fatalities, injuries, and property damage that can result from excavation-related incidents on gas service lines.

Statutory Requirement

In 49 U.S.C. 60110 Congress directed the Department of Transportation (DOT) to issue regulations requiring operators to notify customers in writing about EPV availability, the safety benefits derived from installation, and costs associated with installation. The regulations were to provide that, except where installation is already required, if the customer requests installation, an operator must install an EPV that meets

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 182

[Docket PG-15A; Amendment 182-62]

RIN 2137-AC66

Gasless Flow Valve—Customer Notification

Agency: Research and Special Programs Administration (RSPA), DOT.
Action: Final rule.

SUMMARY: This final rule requires operators of natural gas distribution systems to provide certain customers with information about gasless flow valves (EPVs). Specifically, customers of new and replaced single residence service lines must be provided written notification about the availability of these valves meeting DOT-prescribed performance standards, and related safety benefits and costs. If a customer requests installation, the rule requires an operator to install the EPV if the customer pays all costs associated with installation. EPVs restrict the flow of gas

prescribed performance criteria. If the customer pays all costs associated with installation.

Before DOT prescribed notification regulations, the statute required DOT to issue regulations prescribing the circumstances where operators of natural gas distribution systems must install EPV, unless DOT determined that there were no circumstances under which EPV's should be installed.

RSPA is the administration within DOT responsible for implementing laws addressing pipeline safety.

RSPA published a notice of proposed rulemaking (NPRM) (Notice 2: 58 FR 21524; April 21, 1993) ("Excess Flow Valve Installation on Service Lines"), proposing to require that EPV's be installed on single-residence gas service lines. During the rulemaking process we reviewed technical information, sought advice from state safety representatives, and analyzed available operational data. RSPA determined, primarily for cost reasons, that there were no circumstances where RSPA should require EPV installation. As required by the statute, RSPA reported this determination to Congress on April 4, 1995. A copy of this report is available in the docket. As further required by 49 U.S.C. § 60110, we developed performance standards for EPV's (industry standards were not then available) to ensure that an EPV installed in a single-residence gas service line operates reliably and safely. These performance standards were published as a final rule (61 FR 31448; June 20, 1996).

AGA Petition and Pre-NPRM Meetings

The American Gas Association (AGA) submitted a petition for a rulemaking on EPV customer notification in which it identified several issues it believed we should discuss in a notification rule. RSPA considered AGA's petition (on file in the docket) in developing the notice of proposed rulemaking. To gain further information before developing a proposed notification rule, RSPA met with representatives of AGA, the American Public Gas Association (APGA), NTSB and the Gas Safety Action Council (GASAC) on August 2 and September 6, 1995. We discussed AGA's petition and those meetings in the NPRM.

NPRM

RSPA published an NPRM (61 FR 33476; June 27, 1996), proposing requirements for excess flow valve customer notification. The comment period closed August 28, 1996. Commenters included industry associations, local distribution

companies, consultants, city and state agencies, and a federal safety agency.

Advisory Committee Review

In November 1996, RSPA briefed the Technical Pipeline Safety Committee (TPSSC) on the status and the comments received on this rulemaking. In December 1996, we sent letter ballots to the TPSSC members to vote on the proposed rule and the regulatory evaluation. (The TPSSC is required to serve as a peer review panel and review the costs and benefits associated with any proposed regulatory standard in accordance with 49 USC 60102 (b)(3)). We received 11 out of 15 ballots. Those 11 members voted to adopt the NPRM and Regulatory Evaluation. Seven members had comments, which are addressed below.

The Final Rule

The final rule establishes a new section in the pipeline safety regulations, § 182.383, "Excess flow valve Customer Notification." The rule requires written notification of customers with natural gas service lines where EPV's meeting prescribed performance criteria can be installed. To be consistent with the final rule that prescribed performance standards for EPV's installed on single-residence service lines operating continuously throughout the year at a pressure not less than 10 psig, this rule limits the scope of customer notification to those customers. Of those single-residence services, the rule further limits written notification to new and replaced service line customers.

Definitions

RSPA defines a replaced service line as a natural gas service line where the fitting that connects the service line to the main is replaced or the piping connected to this fitting is replaced.

RSPA defines the service line customer as an operator must notify as the person who pays the gas bill, or where service has not yet been established, the person requesting service. Under this definition, the person who pays the gas bill may be the tenant, the owner, or a third party. In cases where service has not yet been established, such as a new subdivision or cluster of homes, the person requesting new service may be the home builder.

What to Put in the Written Notice

This rule requires that the notification contain the minimum amount of information the statute requires. An operator may decide how to word that information as long as sufficient information is given to provide the

customer a basis to decide whether to pay for EPV installation. The notice must gear the explanations to the gas consumer, not an engineer.

Meets DOT Performance Standards

An explanation that an excess flow valve meeting minimum DOT-prescribed performance standards is available for the operator to install on the service line if the customer pays the cost of installation. The explanation must make clear to the customer that EPV installation is not mandatory, but that if the customer requests installation and pays all costs associated with installation, the operator will install an EPV.

Safety Benefits

An explanation of the potential safety benefits of installing an EPV, to include that an EPV is designed to shut off the flow of natural gas automatically if the service line breaks.

Cost Associated With Installation, Maintenance, and Replacement

An explanation that if the customer requests the operator to install an EPV, the customer bears all costs associated with installation, and what those costs are. In addition, the notice must alert the customer that costs for maintaining and replacing the EPV may be incurred, and what those costs would be, to the extent known.

Additional Information in the Written Notice

The final rule does not require an operator include additional information, such as EPV manufacturers' brochures and a consumer group's telephone number. In the notification, although we are not requiring such information to be included, we encourage operators to include any information that aids a customer's decision making.

When Notification and Installation Must be Made

The final rule requires that one year after the final rule is published, an operator must notify each service line customer of a new service line (single-residence service line that operates at a pressure not less than 10 psig) when the customer applies for service. On replaced service lines, an operator must notify each customer (single-residence service line operating at a pressure not less than 10 psig) when the operator determines the service line will be replaced. If a customer requests installation, the operator must install the EPV at a mutually agreeable date.

What Records Are Required

The final rule requires that an operator must make certain records available for inspection:

- (1) A copy of the notice currently in use; and
- (2) Evidence that notices have been sent to the service line customers (new and replaced single-residence service lines operating at a pressure not less than 10 psig) within the previous 3 years.

When Notification Is Not Required

In the NPRM, we sought comment from operators, state pipeline safety agencies, their representative associations and others on the issue of a state or locally preventing an operator from charging the customer for EPV installation costs. We also sought comment on whether the waiver process in such a situation would be too burdensome. We did not receive any comment. Thus, in RSPA's judgment the regulatory waiver process now in place may be used if a State or local authority prevents or restricts the gas utility from accepting a customer's payment for EPV installation costs. Similarly, if an operator believes that in a particular situation, compliance would be infeasible, impractical or unreasonable, the operator may apply for a regulatory waiver.

The final rule describes certain limited circumstances where an operator would not have to notify a customer.

- Service lines where the operator will install an excess flow valve voluntarily or where the state or local jurisdiction requires installation.
- If excess flow valves meeting the prescribed performance standards are not available to the operator.
- Where an operator has prior experience with contaminants in the gas stream that could interfere with an EPV's operation, cause loss of service to a residence, or where installing an EPV would interfere with necessary operation or maintenance activities, such as blowing liquids from the line.
- In emergency and short time notice replacement situations where an operator cannot notify a customer before replacing a service line. Examples of these situations would be where an operator has to quickly replace a service line because of
 - third party excavation damage
 - Grade 1 leaks, as defined in the Appendix C-192-11 of the Gas Piping Technology Committee (GPTC) Guide for Gas Transmission and Distribution Systems,
 - a short notice service line relocation request

We have allowed an exemption from notification when an operator must quickly replace a service line because of third party damage. Although the impetus for this notification rule was to mitigate the consequences of service line failures, particularly, when caused by third party excavators, we recognize that in such an emergency, an operator may not be able to notify a customer. Nonetheless, although not required to do so, we urge operators to make their best efforts to notify customers in emergency situations, so that the consequences of any future failures may be mitigated.

Discussion of Comments

RSPA received 49 comments in response to the NPRM. Comments included two industry associations (AGA, New England Gas Assoc.), 37 local distribution companies, two consultants, seven city and state agencies, and one federal safety agency (NTSB). In addition, we received comments from TPSSC members. Of these comments, 12 were opposed to issuing any notification rule, and the remaining comments directed their remarks to specific issues.

General Comments—Twelve commenters were opposed to issuing the rule. They questioned the reliability, the benefit versus costs, and the suitability of EPVs to handle the majority of leaks encountered in a gas distribution system. They argued that our focus should be on preventing third-party damage, that incidents involving the type of failures where an EPV is effective are infrequent, and that because most operators design their load systems for future use, EPVs would severely restrict load growth.

Two commenters said the typical customer is not well versed in gas industry technology, safety matters or frequency of service line failures, and may even be confused when asked to make a decision on EPVs. Two commenters suggested that verbal notification may be sufficient.

NTSB pointed out that the status placed on limits on the type of customer who should receive notification. NTSB recommended we require notice of EPV availability to all residential and commercial customers with service lines that have operating parameters compatible with any commercially available EPV.

Response—RSPA is following its statutory mandate to prescribe regulations requiring operators to notify customers in writing about EPV availability, the safety benefits derived from installation, and costs associated with installation, maintenance and

replacement, and requiring operators to install an EPV at the customer's request if the customer pays the installation costs. We considered all comments in developing final regulations.

If notification contains this minimum amount of information, and is written for an average gas customer, the customer should be able to decide whether it wants an EPV installed. If a customer has questions, an operator should be able to provide knowledgeable personnel who can explain technical information to a customer's satisfaction to enable the customer to make a well-reasoned decision about installation.

RSPA determined that it would neither be practical nor cost beneficial for operators to notify all single-residence customers. Determining whether EPVs can be installed on existing lines presents difficulties (such as lack of relevant records and historical data) not encountered on new and replaced lines. Furthermore, RSPA's economic evaluation shows that requiring notification to all single-residence customers would result in substantially higher costs with marginal safety benefits due to the increased time an operator would have to spend in responding to customer inquiries and determining operating conditions on existing lines. Because of the increased installation costs to retrofit an existing line, it would be unlikely that many existing customers would choose to pay the costs of installation. Nonetheless, RSPA encourages operators to consider expanding notification to all single-residence customers.

RSPA will consider expanding the scope of notification to hospitals, schools, commercial enterprises, and apartment buildings after EPV standards and guidelines are published by the American Society of Testing and Materials (ASTM) F17.40 committee and the American National Standards Institute (ANSI)/Gas Piping Technology Committee (GPTC) 2190.

Comments on Cost/Benefit Study—Five commenters said that we had underestimated the costs to comply with the rule. They explained that the cost of developing a utility-specific notice will be significant because of the legal, safety, and customer issues involved, and that we should consider \$35 to \$45 per hour as the cost to develop and review the notice. Commenters said many calls would need an engineer or a supervisor to talk to the customer. AGA said the study had failed to address who would incur the costs if the customer wants the EPV removed, or if a properly installed EPV later malfunctions and cuts off service.

Advisory Group: One member pointed out that postage costs were not included in the total cost to notify all existing residential customers. This member suggested including the estimated number of customers who would request an EPV in each case, and a cost comparison of excavation costs for new and existing customers.

Response—RSPA: has revised its final economic evaluation in light of the comments to include the labor costs of preparing and mailing the notice, and the costs of fringe benefits in the hourly costs. In addition, we revised the salary estimates of the person responding to customer inquiries to accommodate concerns that answering such inquiries may require technical expertise.

RSPA did not include postage costs in its estimate of the cost to notify existing customers because the notification could be included with the customer's monthly bill. We also did not estimate the number of customers who might request an EPV because we have no relevant data. The cost/benefit study did explain in comparing the costs to notify new and replaced customers versus existing customers that existing customers requesting EPV installation might have to pay \$500 or more for installation mostly due to excavation cost. The cost/benefit study is described later in this document and is available in the docket.

Proposed Section 182.353(a)—(68.9 kPa (10 psig) Threshold). Six commenters said that a 68.9 kPa (10 psig) threshold for installing an EPV should not be used as a notification threshold. NTSB said that EPV's should be made available to customers having service lines that operate at pressures as low as 34.5 kPa (5 psig). The other commenters did not want the 68.9 kPa (10 psig) threshold because if the service line pressure for each customer is not recorded, it would be difficult to know if the line pressure will drop below 68.9 kPa (10 psig). Some commenters suggested that a minimum pressure threshold should be left to the operator's judgment.

Response—We proposed that an operator notify a customer of a new or replaced service line that operates at a pressure not less than 68.9 kPa (10 psig) because this is the pressure threshold we had established for EPV installation in the performance standards. We explained our reasons for setting this threshold in that final rule (61 FR 31448; June 20, 1996).

The final rule continues to limit notification to new and replaced service lines meeting the 10 psig threshold. In making this decision, we also considered that:

—Most households in the United States receive natural gas from their service lines between 68.9 kPa (10 psig) to 413.4 kPa (60 psig).

—DOT's incident report data indicates that services in the 34.5 kPa (5 psig) to 68.9 kPa (10 psig) pressure range are unlikely to experience incidents from outside force damage. (A survey of incidents from 1984 to 1992 shows that one out of 212 reportable incidents occurred due to outside force damage).

Comments on Section 182.353(a)—(Service Lines Covered Under This Rule).—One commenter asked if customer-owned service lines were covered. Another commenter said that the proposed rule was unclear whether notification should be sent to two customers if both are supplied from the same service line.

Response—This rule applies to service lines serving a single residence. One service line serving two or more residences would not be covered. Customer-owned service lines operating at or above the 10 psig pressure requirement are included unless one of the notification exemptions applies.

Proposed Sections 182.353(a)(7), (e)(3) and (b)—(Costs Associated With EPV Installation).—We proposed that if a customer requested EPV installation, the customer pay the costs associated with installation and defined those costs as the direct costs (parts and labor) of installation. We also proposed that an operator must install an EPV if the customer agrees to pay all installation costs.

ACA said that Congress clearly intended for the customer to incur all costs including operation and maintenance. Several commenters stated that we must follow Congress's intent to require customers pay for operating and maintaining the EPV. In addition, to the installation costs. Some commenters said that costs must include all incremental parts, labor and maintenance. They said costs such as repair, resetting, replacement, and destructions can be substantial. Three commenters argued that we have no authority to mandate a costing methodology because that authority lies with the state public utility or commission. Some commenters complained that direct costs had not been clearly defined.

NTSB commented that the language in the proposed rule requiring customers to pay replacement costs is inconsistent with the preamble's discussion that operators recoup only the direct costs of installation. NTSB also pointed out that the experience of

the two largest users of EPV's, who had not had any design-related EPV failure in the last 20 years, supported not including replacement costs.

Advisory Group: Two members said costs should include indirect costs of installing or replacing the EPV, including maintenance and replacement costs. One member said, costs incurred due to false closure or other inappropriate operation should be included.

Response—The statute requires that an operator notify its customers of the costs associated with installation, maintenance and replacement but that the operator install an EPV if the customer pays the installation costs. In following this mandate, we are requiring that an operator notify its customers that costs for maintaining and replacing an EPV could be incurred after installation and what those costs are, to the extent known. The notice must also explain that if the customer requests installation, the customer has to pay the installation costs at that time, and what those costs are.

RSPA recognizes that the regulatory authority to price gas lies with state and local public utility commissions. We believe that public utility commissions will recognize that EPV installation, maintenance and replacement costs are legitimate costs and allow operators to charge for those services, to the same extent they are allowed to charge for other service line services. Nonetheless, we believe that to carry out the statutory requirements, we should define some of the costs.

The proposed rule defined installation costs as direct costs (parts and labor) of installing an EPV. We proposed a limit on what an operator could recoup for installing an EPV so that an EPV would not be cost prohibitive. We believe Congress intended gas customers to have a reasonably priced extra safety protection. In finalizing this rule we have attempted to clarify the installation costs that an operator should recoup. Installation costs of an EPV are costs directly connected with installation of EPV's, for example, costs of parts, labor, inventory and procurement.

Although the statute was amended to allow an operator to notify its customers about installation, maintenance and replacement costs, a customer only has to pay installation costs to have an EPV installed on its service line. Thus, we believe that an operator may later recoup maintenance and replacement costs only if such costs are ever incurred. These costs are not to be included in the initial installation costs.

Proposed section 182.363(a)(2)—

Potential Safety Benefits/—The NPRM proposed that notification include an explanation of potential safety benefits. Eight commenters said that the NPRM did not address the potential hazards from ETV's, which could subject an operator to liability if the ETV fails to perform to a customer's satisfaction. One commenter suggested notification include that an ETV is not designed to protect against slow leaks, system over pressure, or leaks inside the house.

We further proposed that the explanation of safety benefits include that an ETV is designed to shut off the flow of the natural gas when the service line is ruptured. A commenter suggested changing the wording to "in the event" the service line is severed, because "when the service line is ruptured" implies that a service line will rupture. This commenter also suggested that the term "rupture" be replaced with "severed", as "rupture" is also used for material failures, such as a crack in polyethylene pipe.

Advisory Group—One member suggested replacing "service line is ruptured" with "damaged service line conditions cause its closure." Another member said the wording "designed to shut off the flow" is not accurate as an ETV may not totally shut off flow.

Response—The statute requires notification to include ETV benefits. The statute does not preclude an operator from putting in ETV limitations (for example, that an ETV does not protect against slow leaks due to corrosion, threaded joints, or leaks beyond the meter assembly).

We have changed "rupture" to "break", and "when" to "if the service line breaks" in the final rule. However, we have retained the phrase "designed to shut off" because it is a performance standard requirement for the valve.

Proposed Section 182.363(a)(4)—
(Notification Language/—The NPRM proposed that notification be "in sufficient detail" and "in language easily comprehensible." Two commenters said this is a subjective standard that does not enable the operator to distinguish between acceptable and deficient language. **Response—**We have revised this requirement. We continue to use performance-based language to ensure that notices are written for the average customer, not for persons with specialized technical expertise.

Comments on Additional Information That Should be in the Notice—One commenter said notification should include information that excessive consumption may cause the ETV to activate. This commenter said the

operator should not give the customer any warranties about an ETV's operation. One commenter said that gas operators should, in addition to third party damage, describe all conditions, such as earthquakes, lightning strikes, ground subsidence caused by changing weather conditions, and vandalism, which may cause a pipeline to rupture.

Response—RSPA disagrees that excessive consumption may cause an ETV to activate. If the valve meets the ETV performance standards and is chosen properly based on the service line consumption, then the valve will not activate unless consumption exceeds 50% above the maximum flow, an unlikely event. We have used the phrase "if the service line breaks" to acknowledge that other conditions may cause a service line failure. However, we leave to the operator's discretion whether to describe all conditions that may cause a pipeline to fail.

Proposed Section 182.363(e)(5)—
(Comments on Definitions of Replaced Service Line & Service Line Customer/—Twenty six commenters requested further clarification of the proposed "replaced" service line and "service line customer" definitions.

Replaced Service Line—We proposed a "replaced" service line as one in which a section of pipe is replaced between the gas main and meter set assembly. Two commenters suggested a "replaced" service line should be as where a fitting connecting the service line to the main is replaced or when the service is replaced completely from the main to the meter assembly. One commenter suggested a "replaced" line as one where at least 50% of the service line is being replaced. ACGA recommended that a "replaced" service line refer to a natural gas service line in which the fitting that connects the service line to the main is replaced or the piping connected to this fitting is replaced.

Advisory Group—Two members recommended we use ACGA's definition of "replaced" service line.

Service Line Customer—We proposed that a "service line customer", the person the operator should notify, should be the person paying the gas bill or where the service was not yet established, the owner of the property. ACGA suggested that where service has not yet been established, the service line customer should be the person requesting service. Two commenters suggested the person notified should be the person requesting service, or where gas service exists and the residence is vacant, the owner of the property. One commenter said the person notified

should be the builder, i.e., the owner of the property who signs for new service. NTSB said the proposed definition does not allow persons at risk, specifically renters in new housing subdivisions, to decide whether an ETV should be installed. NTSB said that because our definition limited operators to notifying builders in new housing subdivisions, we should require notification of both renters and the owners of the rented buildings.

Some commenters said the proposed wording could be misread to suggest all customers must be notified. Commenters suggested using "each applicable customer" and define "applicable customer" as those customers meeting the criteria in 182.363 (a). ACGA and other commenters suggested adding another definition to clarify which customers should be notified.

Response—We have revised the "replaced" service line and "service line customer" definitions. We have also re-written the regulation for clarity, to eliminate any confusion over which gas customers must be notified. NTSB's comment that both renters and owners be notified would create conflict if one wanted an ETV installed and the other did not. Proposed section 182.363(a)(5) is changed to section 182.363(b) in the final rule.

Proposed Section 182.363(c)—(30 Day Notification and One Year

Implementation Requirements/—

Practically all commenters expressed concern about the proposed requirement that an operator notify each customer thirty days before a new or replaced service line is installed. They said thirty days was impractical and unduly burdensome. Commenters explained that operators currently schedule and complete regularly planned service line installations in less than 30 days. Moreover, operators replace service lines immediately for public safety and good customer service. Some commenters suggested allowing an operator to establish its own criteria for when to notify. One commenter said that we did not clearly state how many times the service line customer should be notified.

NTSB said the one-year implementation period is too long, and that six months is more than adequate for the industry to prepare for compliance. NTSB explained that ETV's are commercially available and that industry associations are already developing guidance to help operators draft appropriate notices.

Advisory Group—Two members recommended a 5 to 10 day notification

period as more appropriate than the proposed 30 days.

Response—RSPA agrees that 30 days advance notification is impractical and has revised this requirement. Now an operator must notify a new service line customer (single residence with service line pressure not less than 10 psig) of EPV availability when that customer applies for service. A customer having its service line replaced (single residence with service line pressure not less than 10 psig) must be notified of EPV availability when the operator determines the service line will be replaced. If the customer requests installation, an operator must install the EPV at a mutually agreeable date. In either case, a customer has to be notified only once.

We have kept the one-year implementation period. We disagree that a six-month implementation period is adequate for operators to notify customers. One year is more appropriate for operators to learn which customers to notify, to draft notices, and to instruct personnel to handle inquiries.

Proposed Section 192.383(d)—(Recordkeeping.) Six commenters objected to the proposal that operators keep proof that notices have been sent to customers within the previous 3 years. They said that maintaining a list of notified persons will be burdensome and cumbersome, driving up the record keeping cost. Some commenters suggested changing "proof" to "evidence."

Advisory Group—One member argued against any record keeping requirement because of the difficulty in tracking who was notified.

Response—To check compliance, RSPA and State inspectors will need to view a copy of the notice operators send customers and evidence that notices have been sent to customers. This evidence may relate to the overall notification process, and need not be customer-specific. For example, a record showing the approximate dates notices are mailed or a written procedure for the notification process would be evidence notices have been sent. Therefore, we have not changed the proposed record keeping requirement.

Proposed Section 192.383(e)—(Exemptions from Notification Requirements.) In the NPRM, we sought comment and information on situations where an operator may not be able to notify a customer before replacing a service line. Seventeen commenters responded to this issue. Several commenters said that many repairs made to services to repair minor damage or eliminate leaks involve replacing a short section of line and not

exposing the main, and should be exempt from the notification rule. The majority emphasized that notification requirements should not apply to emergency and short notice replacements, such as when a line has to be replaced because of:

- third party excavation damage
- Grade 1 leaks, as defined in the Appendix C-182-11 of the Gas Piping Technology Committee guide for gas transmission and distribution systems (A leak that represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous.)
- a short notice service line relocation request (a short notice request from the customer or a utility to relocate the service line due to, for example, a main being relocated, to prevent interference with new construction, the widening of a street.)

In addition, AGA and three other commenters urged us to exempt a service line where the regulator/master assembly is within 3.66m (12 feet) of the main. They reasoned that because third party damage on shorter service lines is uncommon, an EPV will not serve any purpose.

One operator said it would not be prudent to put an EPV in any part of the system if contaminants have shown up in other areas of the system. Another commenter said an operator should not have to send notification if it found EPV installation impractical.

Advisory Group—Two members recommended adopting an emergency and short notice exemption. One member recommended exempting notification for service lines less than 3.66m (12ft), because third party damage is unlikely on short lines. One member suggested exempting installation in "impractical or infeasible" circumstances. Another member said it was unclear whether a waiver was required for a specified exemption.

Response—We have amended the notification exemptions to accommodate certain emergency and short notice situations. As explained previously, although we are not requiring notification in those situations, we encourage operators to make their best efforts to notify customers. The consequences of any future service line failures may be mitigated if an EPV is installed. We have not adopted a short line exemption. We believe that because an operator is unlikely to have advance knowledge of a service line's length, creating an exemption for short lines

would serve little purpose. While we recognize that on short service lines an EPV may offer little or no protection, because third party damage is unlikely, we believe the customer should decide whether it wants an EPV installed. An operator may decide whether to include information about short line protection.

Although we allow an exemption when an operator has experienced contaminants in the gas stream, we disagree that EPVs should not be installed throughout the entire distribution system if contaminants have shown up in other areas of the system. These are probably isolated instances, unless the operator can demonstrate otherwise.

RSPA believes the listed exemptions should cover most situations. If in a particular instance, an operator believes it should not notify customers because EPV installation would be infeasible, impractical, or unreasonable, the operator may apply for a regulatory waiver.

Comments on Rearranging Sections—Three commenters recommended we rearrange sections for clarity.

Response—RSPA has rewritten and rearranged the final rule for clarity.

Regulatory Analysis and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. The final rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

A regulatory evaluation has been prepared based on the estimated expense involved in developing and sending customer notification to new and replaced single-residence service line customers.

RSPA has determined that large and moderate-sized gas operators will develop their own customer notice. This should take approximately 40 hours at approximately \$40 an hour or a one-time cost of \$1,600 per company (40 hours x \$40 per hour = \$1,600). RSPA estimates in its regulatory evaluation (based on analysis done for an earlier rulemaking on customer-owned service lines) that there are 106 large gas operators and 145 moderate-sized gas operators. Therefore, the cost to the industry to develop the required notice will be a one-time cost of \$401,600 (251 x \$1,600).

The cost of mailing this notice will be \$0.32 plus the estimated \$0.1 copying

cost for a one-page notice, for a total cost of \$0.43 per customer. If there are 900,000 new or replaced customers annually, the cost of postage for this notice is $\$378,000 (900,000 \times .42)$ mailing) per year. In our draft economic evaluation, we did not account for the labor cost it takes to mail the notice. One operator suggested 5 minutes per notice by an employee making \$11 per hour with an additional 60% for fringe benefits, which calculates to $\$1,320,000 (900,000 \times \$11 \times 1.6 \times 1\frac{1}{4} = \$1,320,000)$. The total cost of postage plus labor would be $\$1,698,000$ annually ($\$378,000 + \$1,320,000 = \$1,698,000$).

Assuming 10% of all notified customers were to call operators for more information would result in 90,000 phone calls. Each call lasting on average five minutes would amount to 7,500 hours ($90,000 \times 5/60$ hrs) spent answering customer inquiries. In the draft evaluation, we estimated the hourly wage for the person answering telephone inquiries would be \$15 an hour. One commenter suggested that the person answering telephone inquiries should be an engineer. To reflect that a person with more technical expertise may need to answer a customer's inquiry, we increased the hourly salary estimate to \$25 per hour plus benefits. If the employee responsible for answering were paid \$25 per hour plus 60% for fringe benefits, the additional cost of these conversations would be $\$300,000 (75,000 \times \$25 \times 1.6)$ per year. The total cost to the industry will be the one-time cost of developing the notices, $\$401,600$, and the additional cost per year of mailing and handling inquiries, $\$1,998,000 (\$300,000 + \$1,698,000 = \$1,998,000)$.

As discussed in the Regulatory Evaluation, the American Public Gas Association (APGA), which represents municipal gas distribution companies (the bulk of small operators), has agreed to assist small and medium-sized operators in developing a generic ETV notification. RSPA also believes that ETV manufacturers, as well as other large companies and state gas associations, are likely to assist smaller gas operators in developing an ETV notice. RSPA believes that, with this help, small and medium-sized operators will choose to use a generic notification rather than incur the cost of developing their own notice. However, even with the cost of notice reproduction, mailing, and handling phone inquiries as described above, we estimate that the cost of developing the required notice will be minimal for small and medium-sized operators. We considered requiring notification of the availability of ETVs to all

customers, not simply new and replaced customers. We rejected this alternative as not being cost-beneficial for two reasons. First, the cost of this rule would be an additional \$3.36 million ($\3.6 million customers \times $\$3.10$ per copy) just for copying the notice. In addition, assuming 10% of all notified customers were to telephone operators for more information, that would result in 3.36 million additional phone calls. Each call lasting five minutes would amount to 446,866 hours (3.36 million \times $5/60$ hours). If the employees responsible for answering these inquiries were paid a salary of \$25 per hour plus 60% for fringe benefits, the additional cost of handling inquiries would be $\$17.97$ million ($3.36M \times 1\frac{1}{4} \times 1.6 \times \$25 = \$17.97M$) to the industry. Therefore, the total cost of notifying existing customers would be additionally $\$23.33$ million ($\$5.36M + \$17.97M$). Second, there would be marginal safety benefit as few existing service line customers would be likely to request ETV installation that could cost more than \$300 per service line, mainly due to the excavation costs associated with such installation. Therefore, RSPA concludes that requiring operators to notify all existing customers would cost significantly more and would provide little additional benefit to the public.

Benefits

The main benefit of this regulation is that new and replaced service line customers will be provided with the necessary information for them to decide whether they should request that an ETV be installed on their service line. Other expected benefits from this rule are increased ETV use, which could reduce the fatalities, injuries and property damage that can result from excavation-related incidents on gas service lines.

Although the total benefits of this rule cannot be estimated, RSPA has analyzed incidents (March 1991–February 1994) involving 2 fatalities and 16 injuries which may have been prevented with the installation of an ETV. Further, the average property damage from 30 reportable incidents (March 1991–February 1994) involving service lines where ETV may have mitigated the accident was estimated to be \$14,082 per incident (1993 dollars). Updating this for November 1997 dollars the average property damage per incident is estimated to be \$15,729 per incident.

Conclusion

Based on the findings of this evaluation this rule should have minimal economic impact on industry and the public. The regulatory

evaluation is available for review in the docket.

Regulatory Flexibility Act

The Federal Government is required to determine the impact of its regulations on small entities. Based on the regulatory evaluation, RSPA has determined that the rule will not have a significant impact on a substantial number of small entities. Approximately 1,600 natural gas distribution operators will be affected by this rule. APGA, the trade association of the majority of small operators, has indicated it will assist operators in preparing a notification. Additionally, ETV manufacturers have also offered to assist operators. It is also likely that regional gas associations and large operators will assist smaller operators in developing the appropriate notification. All these actions will serve to minimize the costs to small operators because small operators are apt to use a generic notice created by one of these groups rather than incur the expenses of developing their own notice.

Paperwork Reduction Act

This final rule contains information collections that have been submitted for review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (Pub. L. 104–131). RSPA has made some adjustments to its hourly and cost paperwork burden estimates based on comments it received to its draft economic evaluation. If any commenters have additional concerns that have not previously been submitted, they may submit their comments directly to OMB. Interested persons are invited to comment on the collection of information. Comments about:

- (1) The necessity and utility of the information collection for the proper performance of the agency's functions;
- (2) the accuracy of the agency's burden estimates, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the information collection burden on the respondents, including the use of automated, electronic, mechanical, or other technological collection techniques.

Administration: Department of Transportation, Research and Special Programs Administration.

Title: Excavation Flow Valves: Customer Notification

Need for Information: By notifying customers that they may have an excess flow valve installed on their line at cost, some of the consequences of service line

failures (fatalities, injuries and property damage) could be mitigated.

Summary: Operators must demonstrate that they have met the EPRV notification to their customers.

Proposed Use of Information: The notification will advise customers that they may request an excess flow valve be installed on their service lines at their own expense. Also, by keeping proof that notification was sent, RISA will be able to ascertain that operators are complying with this regulation.

Frequency: Occasionally, once for each new and renewed customer.

Number of Respondents: 1,500.

Estimate of Burden: 92,540 hours.

Respondents: Natural Gas Distribution Operators.

Estimated Total Annual Burden on Respondents: 58.2 hours (first year) 51.9 hours each subsequent year.

Comments on the information collection requirements should be submitted within 30 days of the publication of this notice to: the Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, 725 17th St., NW Washington, D.C. 20503, ATTN: Desk Officer RSP-A. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

This rule will not have substantial effects on states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with ...O. 12613 (32 PR. 4168): October 30, 1967, RSPA has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1993. It does not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects in 49 CFR Part 192
Pipeline safety, Reporting and
recordkeeping requirements.

in consideration of the foregoing, RSPA amends 49 CFR Part 192 as follows:

PART 162—(AMENDED)

1. The authority citation for Part 192 continues to read as follows:

Authorizing: 48 U.S.C. 5163, 60102, 60104, 60110, and 60112; 48 CFR 1.43.

2. Part 192 is amended by adding § 192.383 to read as follows:

9 (82.5%) Express how value customers
perceive.

(a) **Definitions.** As used in this section:

Costs associated with installation means the costs directly connected with installing an excess flow valve, for example, costs of parts, labor, inventory and procurement. It does not include maintenance and replacement costs until such costs are incurred.

Replaced service line means a natural gas service line where the fitting that connects the service line to the main is replaced or the piping connected to this fitting is replaced.

Service line customer means the person who pays the gas bill, or whose service has not yet been established, the person requesting service.

(b) Which customers must receive notification. Notification is required on each newly installed service line or replaced service line that operates

continuously throughout the year at a pressure not less than 68.9 m (10 psig) and that serves a single residence. On these lines an operator of a natural gas distribution system must notify the service user customer upon his writing.

(c) *Water to put in the written notice.*

(1) An explanation for the customer that an *excess flow valve* meeting the performance standards prescribed under § 182.301 is available for the operator to install if the customer bears the costs associated with installation;

(2) An explanation for the occurrence of the potential safety benefits that may be derived from installing an excess flow valve. The explanation must include that an excess flow valve is designed to shut off the flow of natural gas automatically if the natural gas breaker:

(3) A description of installation.

(d) When notification and installation must be made.

(1) After February 2, 1970 an operator must notify each service line customer set forth in paragraph (b) of this sec. 10n:

- (i) On new service lines when the customer applies for service.

(ii) On replaced service lines within the operator's determination the service line will be replaced.

(2) If a service line customer requests installation an operator must install the EPV at a mutually agreeable date.

(e) What records are required.

(1) An operator must make the following records available for inspection by the Administrator or a State agency participating under 49 USC 60105 or 60106:

(f) A copy of the notice currently in use; and

- (1) When notification is not required.
- (2) That ensures flow valves meeting the performance standards in § 192.361 are not available to the operator;

Injured in Washington, D.C. on January 27, 1968.

Kathryn B. Carroll,

Acting Administrator

[FR Doc. 98-3488 Filed 2-2-99; 0:45 am]
BILLING CODE 4810-01

regulations for 1997, thereby reducing costs and enhancing economic growth.

EFFECTIVE DATE: This direct final rule takes effect May 4, 1998. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of May 4, 1998. If RSPA does not receive any adverse comment or notice of intent to file an adverse comment by March 19, 1998 the rule will become effective on the date specified. RSPA will issue a subsequent notice in the Federal Register by April 20, 1998 after the close of the comment period to confirm that fact and reiterate the effective date. If an adverse comment or notice of intent to file an adverse comment is received, RSPA will issue a timely notice in the Federal Register to confirm that fact and RSPA would withdraw the direct final rule in whole or in part. RSPA may then incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 180, 191, 192, 199, 195, and 199

(Document No. RSPA-97-0281; Joint Mem. 199-7; 191-1; 192-06; 199-19; 195-4; 199-61; 199-2; 199-17.)

RIN 2157-AD09

Pipeline Safety: Periodic Updates to Pipeline Safety Regulations (1997)

AAGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Direct final rule.

SUMMARY: This final rule is part of an annual effort by OPS to improve safety by clarifying and updating the pipeline safety regulations. Revisions include updated references to voluntary specifications and standards incorporated by reference, and various clarifications and grammatical corrections. These updates reflect the most recent editions of such specification and standard incorporated by reference to enable pipeline operators to utilize current technology, materials, and practices. In addition, certain gender-specific terms have been replaced with gender-neutral terms. Consistent with the President's goals of regulatory reinvention and improvement of customer service, this final rule updates the pipeline safety

regulations. Comments should be sent to the Docket Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590-0091. Comments should identify the docket number (RSPA-97-0281). Persons should submit the original document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed, stamped postcard. The Docket Facility is located on the plaza level of the Nassif Building in Room Number 401, 400 Seventh Street, SW, Washington, DC. The Docket Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays when the facility is closed.

FOR FURTHER INFORMATION CONTACT: Ethan M. Wynant, (202) 366-0918, or by e-mail (ethan.wynant@rpa.dot.gov), regarding the subject matter of this Notice, or the Docket Unit, (202) 366-4453, for copies of this final rule or other material in the docket. Further information can be obtained by accessing OPS Internet Home Page at: ops.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

In a March 1995 memorandum, President Clinton directed Federal regulatory agencies to, among other things, conduct a page-by-page review of all agency regulations, cutting or revising those that were obsolete, intrusive, or better handled by parties other than the Federal government (i.e.,

private business, State, or local government).

In response to the President's directive, RSPA issued a final rule on May 24, 1996 (61 FR 28121) that updated references to voluntary specifications and standards. This rulemaking is the second annual update of the pipeline safety regulations to reduce unnecessary burdens on the regulated community and to ensure that the pipeline safety regulations incorporate the most current technical standards and specifications.

Incorporation by Reference

RSPA is incorporating by reference all or portions of nine updated documents containing practices, codes, standards, and specifications developed and published by technical organizations, including the American Society of Mechanical Engineers, American Society for Testing and Materials, Manufacturers Standardization Society of the Valve and Fitting Industry, and National Fire Protection Association. This updated standards incorporates the latest technology and engineering practices. Adoption of these updated documents ensures that pipeline operators will not be unnecessarily burdened with outdated materials, design, and construction requirements. These documents can be obtained by contacting the following organizations:

1. American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.
2. The American Society of Mechanical Engineers (ASME), United Engineering Center, 345 East 47th Street, New York, NY 10017.
3. Manufacturers Standardization Society of the Valve and Fitting Industry, Inc. (MSVFI), 127 Park Street, NW, Vienna, VA 22180.
4. National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-0101.

These documents are available for inspection at the following locations:

1. Office of Pipeline Safety, room 2335, U.S. Department of Transportation, 400 7th Street, SW, Washington, DC 20590.
2. Office of the Federal Register, 800 N. Capitol Street, NW, Suite 700, Washington, DC 20408.

Other revisions

Clarifications

This document amends the following pipeline safety regulations to clarify their meaning:

1. Section 192.19(b)(5) states that "The operator (if applicable), plumbers,

and heating contractors can assist in locating, inspecting, and repairing the customer's buried piping." This final rule clarifies the reference by deleting the term "plumbers" and inserting the phrase "plumbing contractors".

2. Section 192.614(d)(3) requires operators to "Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins." This requirement can be confusing to the operator in terms of interpreting the meaning of "as far as practical." Therefore, this final rule amends this paragraph to require temporary marking of buried pipelines before excavation activities begin "except in emergency situations."

3. Section 195.56(a) describes safety-related condition reports "under § 191.55(a) . . . which is inaccurate. Safety-related condition report requirements for Part 195 are contained in § 195.55(a). This final rule makes that clarification.

4. The last line of § 199.17(a) provides that "samples may be discarded following the end of the 365-period." This final rule clarifies that samples may be discarded following the end of the "365-day period." Also, this final rule revises the language containing the term "his representative," on line 8, to remove the specific reference to gender.

Grammatical Corrections

In various sections of the pipeline safety regulations, minor grammatical errors exist that need correction, and gender-specific language that need revision. The following are the grammatical corrections covered in this rulemaking:

1. § 190.7(a)—addition of a comma after the term "RSPA," on line 5, and revision of the language containing the term "him," on line 8, to remove the specific reference to gender.
2. § 190.203(a)—addition of a comma after the term "OPS," on line 3.
3. § 190.206—addition of a comma after the term "violation," on line 2.
4. § 192.107(b)(2)—addition of a comma after the term "section," on line 3.
5. § 193.2059(d)(1)(B)—deletion of the comma after the term "but" and the addition of a comma after the term "system" on line 8.

Updates

In § 191.21 of the pipeline safety regulations, an authorization date follows the Office of Management and Budget (OMB) Control Number. Although the OMB number is still current, this notice removes the

unnecessary authorization date. This section is amended to read as follows:

1. § 191.21—the chart provided in this section is amended to remove the reference to the March 31, 1996, as the final date of approval for this OMB Control Number. This number is still current and there is no date limiting its authority.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not reviewed by the Office of Management and Budget (OMB). The final rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11094).

Executive Order 12612

The final rule has been analyzed with the principles and criteria in Executive Order 12612 ("Federalism") (52 FR 41845), and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

Based on the facts available, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects

49 CFR Part 190
Compliance, Pipeline safety,
Reporting.

49 CFR Part 191
Annual reports, Incident reports,
Pipeline safety.

49 CFR Part 192

Incorporation by reference, Natural
gas, Pipeline safety.

49 CFR Part 193

Incorporation by reference, Liquefied
natural gas (LNG), Pipeline safety.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide,
Incorporation by reference, Petroleum,
Pipeline safety.

49 CFR Part 199

Drug and alcohol testing, Pipeline
safety.

In consideration of the foregoing,
RSPA amends 49 CFR Parts 190, 191,
192, 193, 195, and 199 as follows:

PART 190—[AMENDED]

1. The authority citation for Part 190 continues to read as follows:

Authority: 31 U.S.C. 1221; 49 U.S.C. 5101-5127, § 60101 et seq.; and 49 CFR 1.53.

2. Paragraph (a) of § 190.7 is revised to read as follows:

§ 190.7 Subpoena; witness fees.

(a) The Administrator, RSPA, the Chief Counsel, RSPA, or the official designated by the Administrator, RSPA, to preside over a hearing convened in accordance with this part, may sign and issue subpoenas individually on their own initiative or, upon request and adequate showing by any person participating in the proceeding that the information sought will materially advance the proceeding.

3. Paragraph (a) of § 190.203 is revised to read as follows:

§ 190.203 Inspectors.

(a) Officers, employees, or agents authorized by the Associate Administrator for Pipeline Safety, RSPA, upon presenting appropriate credentials, are authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties are relevant to determining the compliance of such persons with the requirements of 49 U.S.C. 60101 et seq., or regulations or orders issued thereunder.

4. The introductory text of § 190.209 is revised to read as follows:

§ 190.209 Response options.

Within 30 days of receipt of a notice of probable violation, the respondent shall respond to the Regional Director who issued the notice in the following way:

* * *

PART 191—[AMENDED]

1. The authority citation for Part 191 continues to read as follows:

Authority: 49 U.S.C. 5121, 50102, 50103, 50104, 50105, 50117, 50118, and 50124; and 49 CFR 1.53.

§ 191.21 [Amended]

2. The heading of the chart in § 191.21 is amended to remove the phrase "APPROVED THROUGH MARCH 31, 1986."

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 50102, 50104, 50105, 50106, 50110, 50113, 50118; and 49 CFR 1.53.

2. Paragraph (b)(5) of § 192.18 is revised to read as follows:

§ 192.18 Customer notification.

(b) * * *

(5) The operator (if applicable), plumbing contractors, and heating contractors can assist in locating, inspecting, and repairing the customer's buried piping.

3. Paragraph (b)(2) of § 192.107 is revised to read as follows:

§ 192.107 Yield strength (B) for steel pipe.

(b) * * *

(2) If the pipe is not tensile tested as provided in paragraph (b)(1) of this section, 24,000 p.s.i.

4. Paragraph (c)(5) of § 192.614 is revised to read as follows:

§ 192.614 Damage prevention program.

(c) * * *

(5) Provide for temporary marking of buried pipelines in the area of excavation activity before the activity begins, except in emergency situations.

5. Appendix A of part 192 is amended by revising paragraphs II, C (1), (2), (9) and (10), II, E (1) and II, F (1) to read as follows:

Appendix A To Part 192—Incorporated by Reference

II. Documents incorporated by reference. (Numbers in parentheses indicate applicable editions.)

C * * *

(1) ASTM Designation: A 53 "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless" (A53-96).

(2) ASTM Designation: A 106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A106-96).

(9) ASTM Designation D638 "Standard Test Method for Tensile Properties of Plastics" (D638-96).

(10) ASTM Designation D2513 "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing and Fittings" (D2513-96a).

E * * *

(1) MSS SP44-96 "Steel Pipe Line Flanges" (includes 1996 errata) (1996).

F * * *

(1) NFPA 30 "Flammable and Combustible Liquids Code" (1996).

PART 193—[AMENDED]

1. The authority citation for Part 193 continues to read as follows:

Authority: 49 U.S.C. 5103, 50102, 50103, 50104, 50105, 50106, 50110, 50113, 50118; and 49 CFR 1.53.

2. Paragraph (d)(1)(i) of § 193.2059 is revised to read as follows:

§ 193.2059 Flammable vapor-gas dispersion protection.

(d) * * *

(1) * * *

(i) The rate of vaporization is not less than the sum of flash vaporization and vaporization from boiling by heat transfer from contact surfaces during the time necessary for spill detection, instrument response, and automatic shutdown by the emergency shutdown system, but not less than 10 minutes, plus, in the case of impounding systems for LNG storage tanks with side or bottom penetrations, the time necessary for the liquid level in the tank to reach the level of the penetration or equilibrate with the liquid impounded assuming failure of the internal shutoff valve.

3. Appendix A to Part 193 is amended by revising paragraphs II, E (1), II, G (1), to read as follows:

Appendix A To Part 193—Incorporation By Reference

II. Documents incorporated by reference. (Numbers in parentheses indicate applicable editions.)

E * * *

1. ASME/ANSI B31.3 "Process Piping" (1996)—includes 1996 Addenda.

G * * *

1. NFPA 30 "Flammable and Combustible Liquids Code" (1996).

PART 195—[AMENDED]

1. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 50102, 50104, 50105, 50106, 50118; and 49 CFR 1.53.

2. Section 195.3 is amended by revising paragraph (c)(5) (i) and (ii) to read as follows:

§ 195.3 Matter incorporated by reference.

(c) * * *

(5) * * *

(i) ASTM Designation: A 53 "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless" (A 53-96).

(ii) ASTM Designation: A 106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A 106-96).

3. Paragraph (a) of § 195.56 is revised to read as follows:

§ 195.56 Filing safety-related condition reports.

(a) Each report of a safety-related condition under § 195.55(a) must be filed (received by the Administrator) in writing within 5 working days (not including Saturdays, Sundays, or Federal holidays) after the day a representative of the operator first determines that the condition exists, but not later than 10 working days after the day a representative of the operator discovers the condition. Separate conditions may be described in a single report if they are closely related. To file a report by facsimile (fax), dial (202) 368-7128.

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 49 U.S.C. 5103, 50102, 50103, 50104, 50105, 50106, 50118; and 49 CFR 1.53.

2. Paragraph (a) of § 199.17 is revised to read as follows:

§ 199.17 Retention of samples and retesting.

(a) Samples that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days as required by the DOT Procedures. Within this 365-day period, the employee or the employee's representative, the operator, the Administrator, or, if the operator is subject to the jurisdiction of a state agency, the state agency may request that the laboratory retain the sample for

Amendments 199

Amdt. 199-2; Docket No. PS102

DEPARTMENT OF TRANSPORTATION

**Research and Special Programs
Administration**

49 CFR Part 199

[Docket No. PS-102, Amdt. No. 199-2]

RIN 2137-AB54

Control of Drugs Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

AGENCY: Research and Special
Programs Administration (RSPA),
DOT.

ACTION: Final rule; partial grant of
petitions for reconsideration.

SUMMARY: This action responds to petitions for reconsideration, of the final rule, published in the *Federal Register* on November 21, 1988 (53 FR 47084), requiring operators of pipeline facilities for the transportation of natural gas or hazardous liquids and operators of liquefied natural gas facilities to have an anti-drug program for employees who perform certain sensitive safety-related functions covered by the pipeline safety regulations. On April 13, 1989, the implementation dates contained in the final rule were modified to permit reevaluation of the rule in light of recent decisional law and consideration of issues raised by the petitions for reconsideration. The petitions for reconsideration are granted in part and denied in part, for the reasons set forth below. This document amends the final rule to implement those portions of the petitions granted, and makes other clarifying changes and corrections.

EFFECTIVE DATE: The amendments in this document are effective January 17, 1990.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon, Assistant Director for Regulation, Office of Pipeline Safety, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-1640.

SUPPLEMENTARY INFORMATION: On November 21, 1988, RSPA published a final rule (53 FR 47084) entitled Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations. The rule requires pipeline operators to have an anti-drug program which includes pre-employment, post-accident, random, and reasonable cause drug testing and an Employee Assistance Program (EAP) for education and training regarding the effects and consequences of drug use.

On April 13, 1989, RSPA published a notice of a delay in the implementation dates (54 FR 14922) to permit careful reevaluation of its rule in light of two recent Supreme Court decisions, as well as

consideration of the issues raised by several petitions for reconsideration. Dates for commencement of drug testing were modified in the following manner: The date for commencement of drug testing for operators with more than 50 employees subject to testing was delayed to April 20, 1990, and the date for operators with 50 or fewer such employees was delayed to August 21, 1990. RSPA received timely petitions for reconsideration of the final rule from the American Gas Association, the Interstate Natural Gas Association of America, the MidCon Corporation, Tenneco Gas Pipeline Group, Pacific Gas and Electric Company, and El Paso Natural Gas Company, and a late-filed petition from the United Steelworkers of America, AFL-CIO. RSPA considered the issues raised in all seven petitions for reconsideration and also reviewed the rule in light of recent decisional law. Discussion of the issues and RSPA's response follows.

Request for Stay Pending Supreme Court Decisions. Pacific Gas and Electric Company (PG&E), the Interstate Natural Gas Association of America (INGAA), and the Tenneco Gas Pipeline Group (Tenneco) requested a delay in implementation of the final rule until the Supreme Court issued decisions in two cases that directly affect employee drug testing programs: *Skinner v. Railway Labor Executives Association*, 109 S.Ct. 1402 (1989), and *National Treasury Employees Union v. Von Raab*, 109 S.Ct. 1384 (1989). INGAA requested a stay of one year after the constitutional issues are resolved.

RSPA Response. On March 21, 1989, the Supreme Court announced its decisions in both cases and upheld the constitutionality of certain types of federally-mandated employee drug testing. On April 13, 1989, RSPA published a notice delaying the implementation dates for the final rule to enable consideration of the Supreme Court decisions and of the pending petitions for reconsideration. RSPA thus effectively granted this portion of the petitioners request. RSPA does not believe any additional delay in implementing the rule is needed.

Constitutional Issues. The American Gas Association (AGA) argued that mandatory random drug testing may violate the Fourth Amendment prohibition on unreasonable searches, and suggested that until the issue is resolved by the courts, operators should be given the option of instituting random testing, but should not be required to do so.

Specifically, the petitioners asserted that RSPA has not shown a compelling governmental safety interest sufficient to demonstrate the constitutionality of the final rule because DOT has acknowledged the excellent safety record of the pipeline industry and has been unable to provide any evidence of a drug problem in the pipeline industry. Two petitioners also noted that a U.S. District Court (Northern District of California) had issued a temporary restraining order against random and mandatory post-accident drug testing in the trucking industry, (which was subsequently expanded to a preliminary injunction) and suggested therefore that random testing was unlikely to with-stand constitutional scrutiny.

INGAA asserted that a number of pipeline employees may have property interests in their jobs stemming from a collective bargaining agreement or other employment contract. INGAA contends that to the extent these employees have such a property interest, the drug testing regulations violate the due process clause of the Fifth Amendment because a positive urine test requires that the employee be removed immediately from his or her job duties without a hearing, and endangers his or her continued employment.

RSPA Response. The decisions the Supreme Court handed down in *Skinner* and *Von Raab* shed considerable light on the constitutional issues raised in the petitions. The Supreme Court agreed that the drug tests were searches and, therefore, implicated the Fourth Amendment's protection against unreasonable searches and seizures; however, the Court concluded that the tests were reasonable, under a balancing test that measured the privacy interests of the employees against the Government's public safety and law enforcement interests. The most important factors in this balancing were: The Government's compelling interest in detecting and deterring the use of drugs and alcohol by workers in safety or security-related jobs; the employees diminished expectations of privacy resulting from either

existing, pervasive governmental safety regulation, or the nature of the employees duties; the search was not conducted pursuant to a criminal investigation; and the minimal intrusion on employee privacy from the tests, which were conducted in a medical-like environment and, generally, without direct observation.

The Court found the Governments interests in drug testing sufficiently compelling to make warrants, probable cause, or individualized suspicion unnecessary (reversing an earlier ruling by the U.S. Court of Appeals for the Ninth Circuit, *Railway Labor Executives Association v. Burnley*, 839 F.2d 575 (1988)). The Court noted that a substance-impaired employee performing a safety-sensitive job could cause tragic consequences long before any signs of impairment were noticeable. Significantly, the Court found that the Governments interest was served by the deterrent effect of the drug testing in both cases, notwithstanding that testing might reveal few drug users. In *Von Raab*, however, the Court held that the record evidence was insufficient to determine whether the drug testing was reasonable for employees subject to testing only because they had access to classified materials. The Court remanded this issue to the Fifth Circuit Court of Appeals.

Although *Skinner* and *Von Raab* did not consider random testing, recent decisions by the U.S. Court of Appeals for the District of Columbia Circuit make it clear that while the random nature of the testing is a consideration, the lower courts will follow substantially the same analysis used by the Supreme Court. *Harmon v. Thornburgh*, 878 F.2d 484 (D.C.Cir. 1989) (random testing of employees holding top secret security clearances is justified); *National Federation of Federal Employees v. Cheney*, No. 88-5080 (D.C.Cir., August 29, 1989) (random testing of certain civilian employees of the Army is reasonable); *American Federation of Government Employees v. Skinner*, No. 87-5417 (D.C.Cir., September 8, 1989) (random testing of DOT employees with safety-sensitive jobs is constitutional). The *Von Raab* and *Skinner* cases establish that if the Government can show that the testing program is reasonable, drug testing is permissible without a warrant, without probable cause, and without particularized suspicion.

In *Skinner*, the Court considered several factors in weighing individual privacy interests against the Governments objectives. The D.C. Circuit enumerated these factors, including (1) the limited intrusions occasioned by the testing procedures; (2) the diminished expectation of privacy that attaches to employment in an industry that is regulated pervasively to ensure safety; and (3) the governments compelling or surpassing interest in railway safety. *Cheney*, slip. op. at 10 (citations omitted). These factors are directly relevant to the pipeline anti-drug rule. The same limited intrusions occasioned by the testing procedures are present in Part 199, which mandates use of 49 CFR Part 40, Procedures for Transportation Workplace Drug Testing Programs (DOT Procedures) (54 FR 49854, December 1, 1989). The DOT Procedures are modeled after and closely conform to the rigorous standards and procedures imposed by the Department of Health and Human Services (DHHS) for drug testing of federal employees (published at 53 FR 11970, April 11, 1988). In addition, the pipeline industry has been and is regulated pervasively to ensure safety so that a diminished expectation of privacy attaches to employment.

Finally, the Government has an obviously compelling interest in pipeline safety. Although pipelines have an excellent safety record, there are still deaths and injuries each year occurring as a result of pipeline accidents. Moreover, there is the potential for a catastrophic accident. Pipelines are often located in populated areas, near schools, homes, and industry, and adjacent to public rights-of-way. RSPA believes the categories of pipeline employees covered by the rule are appropriate in light of the recent court decisions. Employees performing regulated operation, maintenance, and emergency response functions may directly affect the safety of those who work or live near the pipeline.

RSPA does not agree with petitioners concerns that the rule may result in a violation of employees Fifth Amendment due process rights. In any event, the concerns are premature for employees may always challenge their removal from a safety-related position at the time it occurs. When RSPA

determines that a generally applicable rule is necessary for safety reasons, that determination overrides inconsistent terms of labor-management agreements.

Post-Accident Testing. AGA indicated that AGA members are concerned about DOT's institution of a separate category for post-accident testing. AGA indicated that post-accident testing should be based on reasonable suspicion. AGA pointed out that in *Burnley*, the Ninth Circuit Court held that post-accident testing was permissible only when accompanied with reasonable suspicion.

Since the final rule was published, RSPA has received numerous requests to clarify the post-accident testing requirements in the event an employee is injured or unconscious.

RSPA Response. The Supreme Court decision in *Skinner* held that particularized suspicion was not required. RSPA believes that post-accident testing should be retained as a separate category because of the programmatic need to evaluate the factors in pipeline accidents. Accident investigation enables RSPA to examine its regulatory program and an operators compliance to determine if changes are needed to enhance safety.

In response to the requests for clarification, RSPA has revised the post-accident testing requirement in 49 CFR 199.11(b) to clarify that all reasonable steps must be taken to obtain a urine sample if an employee is injured, unconscious, or otherwise unable to evidence consent to the drug test. These reasonable steps include the following procedures. Any injury to an employee should be treated first. The operator should notify the hospital of the need for a specimen. If the employee is injured or unconscious and unable to consent to a urine sample, the operator should wait until the treating physician determines the employee is able to understand a request to provide a sample.

Reasonable Cause Testing. AGA believes that if DOT is concerned with protecting the public safety by eliminating drug-impaired employees from safety-sensitive positions, it should eliminate the reasonable cause standard and substitute the reasonable suspicion standard. AGA asserts that the reasonable cause standard is stricter, and requires that there be reasonable grounds for suspecting that a drug test will reveal evidence of drug abuse on the job. AGA contends that the reasonable suspicion standard, by contrast, would permit testing based upon observations of an employees performance.

In addition, AGA opposes DOT's requirement that large operators with 50 or more employees have at least two of an employees supervisors substantiate and concur in the decision to test the employee under the reasonable cause category as unnecessary and burdensome because of the subjective nature of reasonable cause testing. AGA argues that reasonable cause testing will be subjective regardless of the number of supervisors who concur in a decision to test. The findings of one properly trained supervisor, AGA argues, should be sufficient to initiate reasonable cause testing of an employee.

AGA noted that it supports the exception that an operator with 50 or fewer employees need only obtain the opinion of one trained supervisor to initiate reasonable cause testing and fails to see a clear distinction between the subjective nature of reasonable cause testing when applied by large or small operators.

AGA proposes that if RSPA retains the requirement that two or more supervisors substantiate and concur in a decision to test the employee of a large operator, RSPA should incorporate in the rule language used in the preamble to the final rule to clarify that the concurrence between two supervisors may be made by telephone.

El Paso objected to the requirements for reasonable cause testing because RSPA failed to take into consideration that there may be locations where no supervisor is available, and there may be evidence of drug use other than by observable individual impairment, or behavior, such as possession of roach clips (marijuana smoking devices), information supplied by other employees, etc. El Paso noted that the rule precludes testing entire locations upon receipt of information that drug use is occurring. El Paso stated that it has found that drug testing of entire locations upon receipt of information concerning drug use is a demonstrated effective deterrent.

El Paso suggested that DOT revise its regulations to permit reasonable cause testing of an individual

based on documented observable performance or behavior by a supervisor based on information received either from within or outside its workforce of possible drug use. El Paso further suggested that the required concurrence of a second supervisor should be deleted from the rules and that such testing should require only the authorization of a member of the operators management.

RSPA Response. RSPA agrees with the petitioners that the reasonable cause drug testing requirements should be clarified to incorporate language used in the preamble to the final rule, regarding the concurrence of two supervisors by telephone, and has modified 49 CFR 199.11(d) accordingly. RSPA does not agree, however, that this category of testing should be labeled reasonable suspicion. We have defined the conditions under which the test is performed and the label is, therefore, irrelevant. We see no basis for changing the conditions. Furthermore, while a determination to test based on reasonable cause will always be subjective to some extent, requiring two supervisors to concur lessens the subjectivity involved and the potential for harassment. The exception allowing employers with 50 or fewer employees to have only one supervisor substantiate the decision to test based on reasonable cause was provided to recognize that employees of smaller operators in many cases will not have two supervisors. The potential for a subjective judgment is no less real with a small operator, but the reality of the workplace dictated that RSPA make some provision for these operators.

With regard to El Pasos suggestions, evidence of illegal drug use, such as drug paraphernalia, or information received from a third party may certainly be considered in making a determination of reasonable cause, but neither should be the sole basis for making such a determination. Further inquiry must be made and the supervisor must conclude that there are objective factors indicative of probable drug use. RSPA believes that the concurrence of two of the employees supervisors is necessary to lessen the possibility of an arbitrary determination and the potential for harassment. Requiring two supervisors in an employees chain of command, rather than simply another member of the operators management, provides an additional safeguard in that those supervisors are more likely to be familiar with the employees work history and behavior. Accordingly, RSPA has not revised this portion of the rule except as noted above.

Statutory Authority. Tenneco, AGA, and INGAA argued that the Department does not have statutory authority to regulate the employees or the way in which they conduct their personal lives. Tenneco stated that neither the Natural Gas Pipeline Safety Act of 1968, its legislative history, nor any prior or existing regulations evidence any intent or purpose to regulate the physical or mental attributes, or conduct of employees other than to require that the product of their efforts be satisfactory.

RSPA Response. The two primary statutes under which RSPA administers the pipeline safety program are the Natural Gas Pipeline Safety Act of 1968, as amended (49 App. U.S.C. 1671 et seq.) and the Hazardous Liquid Pipeline Safety Act of 1979, as amended (49 App. U.S.C. 2001 et seq.). RSPA also regulates operators of offshore gas gathering lines under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.).

Authority to implement drug education, awareness, and testing programs is derived from the broad authority granted in the above cited statutes. This authority is applicable to various aspects of pipeline facilities affecting pipeline safety, including design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities, 49 App. U.S.C. 1672 and 2002. Under this authority, RSPA can set qualifications, such as experience and training, for pipeline personnel. This authority extends to allow RSPA to mandate certification programs for such personnel. Section 101 and 201 of Public Law No. 100-561, enacted October 31, 1988.

Administrative Procedure Act (APA). Tenneco, AGA, and INGAA pointed out that the Act also requires the Secretary to consider:

- (a) Relevant available pipeline safety data;
- (b) Whether such standards are appropriate for the particular type of pipeline transportation or

facility;

- (c) The reasonableness of any proposed standards; and
- (d) The extent to which such standards will contribute to public safety.

According to these petitioners, the Department acted outside its authority by failing to consider any of these factors in promulgating the final rule. Petitioners contention, however, is, at bottom, an argument that the rule is arbitrary and capricious. These petitioners argue that RSPA has not considered available pipeline safety data, has no evidence of a drug problem in the natural gas industry, and has acknowledged the excellent safety record of the industry.

Tenneco pointed out that the Departments safety data demonstrates the absence of any kind of a safety problem, and a complete dearth of safety problems relating to illicit drug use. According to Tenneco, considering the stringent pipeline pressure testing and inspection regulations which protect the integrity of the pipeline from a theoretically impaired employee, the extensive drug testing regulations are neither appropriate nor needed for any pipeline facility.

Tenneco indicated that some of the unreasonable burdens the Secretary failed to consider in promulgating this rule include (1) the regulations conflict with state laws that prohibit random testing of employees; (2) civil liability, not only for the operators employees but for contractors employees; (3) the attenuated or piggyback jurisdiction in requiring operators to require random testing of independent contractors; and (4) the high cost to the industry without any corresponding benefit to the industry.

AGA, MidCon and Tenneco objected that the final rule is arbitrary and capricious in violation of the APA because RSPA assumed that there was a drug problem in the pipeline industry even though RSPA did not provide any evidence of a drug problem in the industry, and RSPA did not distinguish between the safety records of the various transportation industries. The petitioners particularly objected to the random testing requirements of the regulation. Tenneco stated that RSPA's assumption that the problem of drug abuse exists in the pipeline industry in similar proportion to that existing in society as a whole is unsupported by the evidence. Tenneco contended that although the regulations could conceivably deter the small percentage of pipeline employees who may use drugs, they will not significantly increase safety because the test does not measure impairment. Since testing does not measure impairment, Tenneco contends, the regulation does not have a sufficient nexus to the governments legitimate concern and is therefore arbitrary. AGA argued that RSPA has no justification for imposing mandatory random testing on the pipeline industry because, unlike the other industries covered by the DOT rules, pipelines have an excellent safety record, do not carry people, and are located underground. AGA also contended that pipeline employees are highly supervised and frequently work in teams, making it less likely that an impaired employee could endanger the public. Moreover, AGA stated, most pipeline accidents are caused by third party excavators over which operators have little control. Finally, AGA argued that the examples RSPA used to discount the above factors; i.e., the 1987 train accident in Chase, Maryland, and the nuclear power industry, where the Nuclear Regulatory Commission had found evidence of drug-related accidents, do not support its position. AGA contended, therefore, that the final rule is arbitrary because RSPA could find no evidence of drug-related accidents in the natural gas industry.

RSPA Response. Part 199 established standards for ensuring that operator personnel who perform functions directly affecting the safety of pipeline transportation are free of drug-induced impairment. In promulgating Part 199, RSPA considered all of the required statutory criteria. RSPA acknowledged the excellent safety record of the industry, but concluded that the potential for harm was serious enough to warrant an anti-drug rule. Faced with substantial evidence of a societal drug problem, RSPA cannot ignore its responsibility to the public. The Supreme Court has held that the existence of a drug problem within a particular workplace is not a prerequisite for an anti-drug program. *Von Raab*, 109 S. Ct. at 1395. The pipeline anti-drug program is limited to those employees who may directly affect safety, and the standards and procedures are designed both to protect employees privacy and to detect illegal drug

use. With respect to Tennecos contention concerning pressure testing and inspection, RSPA does not believe that these measures are sufficient to counteract the behavior of a drug-impaired employee. Pressure testing and inspection are conducted principally at the time of initial construction and detect flaws in the pipeline. After that time, many other factors, including human error, come into play in the operation of a pipeline. RSPA concluded, based on the record evidence and after considering public comments, that part 199 is the minimum standard needed under the circumstances to deter drug use in the pipeline industry. The petitioners have not advanced any arguments of information to convince us otherwise.

With regard to possible conflicts with state laws that prohibit random testing of employees, part 199 preempts, under the Supremacy Clause of the U.S. Constitution, any state or local law, rule, regulation, order, or standard that covers testing of pipeline employees for the presence of drugs or drug metabolites. This preemption exists to the extent that the state or local law interferes with implementation of the federal law. The rule does not preempt any state law that imposes sanctions for the violation of a provision of a state criminal code related to reckless conduct leading to actual loss of life, injury, or damage to property, whether such provisions apply specifically to pipeline employees or generally to the public.

The purported burdens of extending these regulations to contractor personnel are discussed later in this preamble under Contractor Responsibility.

Finally, regarding Tennecos comments about the burdens of these regulations because there is no corresponding benefit to the industry, RSPA concluded that these rules will result in a benefit to the public. The Final Regulatory Evaluation, filed in the docket, shows that benefits will exceed costs for these regulations.

RSPA has already responded to petitioners arguments concerning the safety record of the pipeline industry and the evidence of a drug problem in the industry. Petitioners arguments are no more persuasive in the APA context than in the constitutional context.

Regarding impairment, the Supreme Court has indicated that urinalysis testing, while it may not detect impairment, serves to deter it. *Von Raab*, 109 S. Ct. At 1393. The D.C. Circuit, following reasoning, has rejected arguments that urinalysis testing is unconstitutional because it does not differentiate on- and off-duty impairment. *AFGE*, slip. op. at 25. A primary purpose of Part 199 is to deter illegal drug use that could compromise safety.

Regarding the differences between the pipeline industry and other transportation industries, RSPA acknowledged the fact that the pipeline industry does not transport people. The functions performed by pipeline employees, however, can directly affect the physical safety of people who live or work near the pipeline. The D.C. Circuit has upheld random testing of DOT hazardous materials inspectors (who do not transport people) because their assigned duties require exposure to poisonous, explosive, and highly flammable commodities that could be * * * suddenly ignited by improper handling. *AFGE*, slip. op. at 14. Similarly, pipeline employees performing operation and maintenance functions may work in close proximity to, or otherwise affect, natural gas, gasoline, oil, and other hazardous materials which are explosive, flammable, or combustible, and pose great risks to personal and public safety.

The D.C. Circuit has also rejected arguments that drug testing is unreasonable because a system of safeguards and supervision can abate the risks posed by a drug-impaired employee, relying on the Supreme Courts decision in *Skinner* that the reasonableness of a particular technique does not depend on the existence of other alternatives the agency might have considered. *Cheney*, slip. op. at 15-16.

Random Testing/Non Constitutional Issues. Issues raised by petitioners concerning the constitutionality or record support for random testing are discussed under Constitutional Issues or Administrative Procedure Act.

AGA stated that mandatory random testing would impose a financial burden on employers, and asserted that RSPA did not conduct an adequate economic evaluation. The AGA indicated that RSPA

did not distinguish the costs of testing between its own federal employees (where the costs of drug testing were obtained) and the other industries covered by the rule. In addition, AGA argued that RSPA did not adequately include all of the very significant costs of transporting workers to test sites, travel time for the employee being tested, lost productivity of workers being tested, the costs of maintaining an EAP, or the costs and procedures incurred by the Medical Review Officer. AGA also said that the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee voted against random testing and RSPAs published reasons for rejecting the Committees recommendations were short, cursory, and merely referred to the Departments earlier responses to AGA and other commenters.

El Paso Natural Gas Company (El Paso) questioned whether the 50 percent rate of random testing is justified. El Paso stated that the 50 percent random testing rate was established because it is the rate established by DOT for its own employees and there is no evidence supporting any particular level of testing.

El Paso suggested that DOT revise its regulations to allow the operator to determine the level of testing deemed appropriate for its workforce, with a minimum of no more than 15 percent of the operators covered employees.

El Paso is also concerned about the requirement to randomly select employees for testing by using a random number table or a computer-based number generator. El Pasos concern is that the random testing prescribed by the RSPA regulation would preclude testing an entire geographic location at one time and the regulations would require that the selected employees must be transported to the collection facility for each random test.

RSPA Response. As discussed in the preamble to the final rule, RSPA believes that unannounced testing based on random selection is an essential component of an effective drug testing program. Unannounced random testing has proven to be an effective deterrent to drug use and will provide safety benefits to the pipeline industry by reducing or eliminating drug use by pipeline personnel. Unannounced random testing programs initiated by the military, including the Coast Guard, and private industry show declining drug use, evidenced by a decrease in the number of individuals who test positive for drugs, over the course of the drug testing program.

Random selection avoids potential bias toward, and selective harassment of, an employee because every employee has an equal chance for selection at any time. Random selection is usually accomplished through scientifically accepted methods, such as the use of a random-number table or computer-based, random-number generator. Both methods select individuals by matching these randomly selected numbers against an employees social security number or payroll account number. With random testing, abstinence is the only alternative to possible detection. Using a true random selection basis, employees selected for each weekly or monthly increment would be returned to the pool of those eligible for testing and would be subject to reselection. The vulnerability for reselection deters drug use because an individual selected early in the testing cycle would still be subject to testing throughout the remainder of the year and would still risk detection if he or she used drugs after the first test.

RSPA reiterates that a 50 percent testing rate is necessary to establish a valid confidence level as well as to provide an adequate deterrent to drug use by employees. During the comment period on the proposed rule, RSPA requested specific advice on what the random testing rate should be. Although many commenters suggested rates of 10-20 percent, none provided any data to support a particular level. RSPA, therefore, chose a random testing rate of 50 percent in part based on DOTs experience with its own internal drug testing program, as well as the rates used by the military services. Although the military had used higher rates to achieve the deterrent affect referred to above, RSPA believed that the 50% rate offered a sufficient balance between a rate high enough to deter use while keeping costs reasonable. At this time, petitioners have not presented any information to warrant changing the rate.

RSPA committed in the preamble to the final rule to analyzing random drug testing data after the program goes into effect to determine if the random testing program should be revised, including a revision of the random testing rate. RSPA has made one change to the rule to clarify that random testing is to be conducted at a rate equivalent to 50 percent of covered employees. While the preamble to the final rule was clear, the existing rule language, read literally, could have been interpreted to require the actual testing of half the operators covered employees.

All employees subject to the anti-drug program must be included in the random testing pool. The selection method must ensure that all eligible employees have an equal probability of selection. Operators may randomly select sites and may test either all, or a predetermined percentage, of the eligible employees at the location. If an operator randomly selects a site for testing, the operator has to be very careful that there is no discrimination, for example, either for or against a particular group of employees because of their work schedules (e.g., shift workers or a core office staff that support other employees that are out in the field).

RSPA rejected the recommendations of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee that random testings be eliminated. The reasons given by RSPA for rejecting the advice given by these two advisory committees was that RSPA believes that random testing is a critical component of an anti-drug program and that a 50 percent drug testing rate is necessary to establish a valid confidence level as well as to provide a sufficient deterrent to drug use by employees. RSPA further stated that the 50 percent random testing rate will not impose an undue economic or administrative burden on operators and employees.

RSPA believes that the reasons given by RSPA for rejecting the Committees recommendations were sufficient in light of the detailed and lengthy discussion on random testing set forth earlier in the final rule. The discussion set forth above also reiterates the earlier RSPA position on random testing and all of these arguments are equally applicable to the reasons for rejecting the Committees recommendations to delete random testing from the anti-drug program. RSPA's commitment in the preamble to the final rule to analyze random drug testing data after the program goes into effect to determine if the random testing program should be revised is equally applicable to responding to the Committees concerns regarding random drug testing.

Contractor Responsibility. AGA objected that although the final rule permits the operator to contractually require that the contractor implement its own drug program, the operator is still responsible for ensuring that the contractor comply with DOT regulations. According to AGA, this imposed duty to monitor the contractor means that while the operator does not conduct the testing, it must oversee and inspect the operations of another company. AGA argues that given the nature of the pipeline industrys operations and use of contractors and subcontractors without permanent work forces, it is unreasonable to make operators responsible for ensuring that contractors test their employees.

AGA provided an example of a large midwestern distribution operator that employs seven contractors. At any one time, those contractors provide workers equivalent to the operators permanent workforce so that the operators responsibility for providing a drug-free environment is doubled. In addition, the contractors typically hire workers from a labor pool and therefore have no advance knowledge of which workers will be used on a given day. AGA stated that monitoring a drug testing program under those circumstances would be nearly impossible.

PG&E and MidCon made similar arguments regarding contractor employees, stating that including the contractor employees in a drug testing program, a program which their employees must administer, will result in extraordinary expense and operational delays. El Paso also raised this issue and suggested a revision to §199.21(a) to require that the operator provide by contract that the contractor carry out the provisions of the rule, and provide written documentation of its compliance.

RSPA Response. RSPA noted, in the preamble to the final rule, that pipeline operators who choose to use contractors to perform their safety-related work have always been held responsible for

compliance just as if the operators own employees were performing the work. Furthermore, an operator can require a contractor to implement its own drug program and, as long as the operator is diligent about monitoring the contractors compliance, the operator should be protected from civil liability. In addition, as noted in the preamble to the final rule, limiting the final rule to certain covered functions should minimize the impact on operators who hire unskilled contract laborers. In the example posed by AGA, it is not clear that those contract employees would be performing covered functions. If they were, however, the operator may insist as part of the contract that the contractor implement a drug program and test the entire pool of available workers. Based on a thorough review of this issue, RSPA believes that contractors must be covered and that operators must be responsible for the work performed by contractors. The performance of contract employees in covered positions is no less critical to safety than the performance of the operators own employees.

Collective Bargaining. AGA argued that the final rule is in direct conflict with collective bargaining requirements. AGA stated that since DOT concedes that drug testing is a mandatory subject of collective bargaining agreements under section 8(b) of the National Labor Relations Act, the operator may not be able to impose the DOT regulations in their entirety on a unilateral basis. AGA stated that even with a delay in the effective date to allow more time for negotiation, DOTs rigid regulatory criteria will make it difficult for employers to bargain in good faith. AGA recommended, therefore, that operators be granted flexibility in the design and implementation of their drug testing programs.

The United Steelworkers of America, AFL-CIO (USWA) supported the petition for reconsideration filed by AGA. While the USWA did not concur with each of the specific objections of AGA, USWA believes that the AGA petition is an accurate reflection of the problems with the regulation. The specific example cited was with regard to the issue of the need for collective bargaining, since many of the USWA contracts with the gas industry expire in 1990 and 1991. USWA requested that the effective date of the regulations be stayed until all administrative and legal action on these regulations are concluded, and at least until 1991 to revise or adopt collective bargaining contracts.

RSPA Response. RSPA believes that the regulations in Part 199 provide operators sufficient flexibility in the design and implementation of the drug testing programs to be able to bargain in good faith. Drug programs can be tailored to meet the specific requirements of management and labor.

Moreover, the time provided for implementation of these drug regulations offers sufficient time to revise or adopt collective bargaining agreements. RSPA believes that sufficient modifications to existing collective bargaining agreements can be made to permit a transition until 1990 and 1991 when the existing contracts will expire. More importantly, RSPA safety regulations override collective bargaining agreements. The fact that a matter is a mandatory subject of collective bargaining means that the employer cannot unilaterally impose a requirement for testing. However, when a Federal regulation imposes a legal burden on the employer or employee, they must comply.

Medical Review Officer. AGA objected to the Medical Review Officer (MRO) process because they assert that they did not have an opportunity to comment on the need for or responsibilities of an MRO in the NPRM.

AGA believes that the RSPA requirement for an MRO expands the role of the MRO as established in the DHHS Guidelines. AGA also indicated that many operators would have to appoint numerous MROs at great expense because of the numerous geographic locations of an operators facilities.

AGA also stated that requirements for the MROs are written in prescriptive language and urged RSPA to adopt performance language. AGA stated that the requirement that an MRO be a licensed physician is too restrictive and urged RSPA to permit operators to use a qualified person, such as an EAP counselor or industrial nurse, who is knowledgeable about drug abuse. Finally, AGA asked for clarification of whether an individual who fails a pre-employment drug test is subject to the MRO review process.

AGA requested that RSPA clarify whether individuals who are actually hired who: (1) Fail within

MRO then verifies the test as positive, the MRO reports the test result to the operator. The operator then may not hire the applicant for a covered position and may decline, at the operator's sole discretion, to hire the applicant for a non-covered position. It is necessary to have MRO involvement even for pre-employment tests because applicants who have legitimate explanations for positive tests should not be deprived of an opportunity for a job.

Finally, §199.11(e) has also been revised and retitled Return to duty testing because of the other deletions involving rehabilitation that are made in this document. Similar to the other deletions regarding rehabilitation, since the final rule does not require the operator to provide an opportunity for rehabilitation, it is inappropriate to base the return to duty testing in §199.11(e) on an employee undergoing rehabilitation. This section has been further revised to include the duty of the MRO to determine whether and when an employee may return to duty. In addition, the definition of Rehabilitation committee in §199.3 is deleted because the requirement to establish such a committee was deleted in the final rule.

Use of Drug Test Results in Arbitration and/or Wrongful Discharge Suits. The final rule limits release of an individual's drug test results to two cases: Upon written consent of the individual, or as part of an accident investigation. AGA requested that DOT create an additional exception in §199.23(b) that information regarding an employee's drug test results may be used by the operator-employer in its defense in the event of a challenge. It appears to AGA that an employer who disciplines or discharges an employee with a positive drug test does so at the risk of defending itself in an arbitration and/or wrongful discharge suit without the benefit of such test results. AGA believes that the regulations should allow an operator-employer access and use of those test results to defend itself in the event of such a challenge. AGA believes that the requested exception is consistent with §40.29(n)(5) of the DOT Procedures. That section provides that a laboratory should have qualified personnel available to testify in an administrative or disciplinary proceeding against an employee when that proceeding is based on positive urinalysis results reported by the laboratory.

RSPA Response. RSPA agrees with AGA that the DOT Procedures contemplate that an employer should be able to use information regarding an individual's drug test results in the event of a challenge. RSPA has not amended its rule, however, because this issue is addressed in the final rule responding to comments on the DOT Procedures (54 FR 49861).

Executive Order 12291 and the Paperwork Reduction Act. INGAA asserted that ignoring burdens such as paperwork, liability for contractors, potential conflict with collective bargaining agreements, and compliance with the DOT Procedures, and by failing to show a need for the final rule, RSPA ran afoul of Executive Order 12291, which requires, inter alia, that:

- (a) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;
- (b) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;
- (c) Regulatory objectives shall be chosen to maximize the net benefits to society;
- (d) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and
- (e) Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

INGAA stated that RSPA failed to determine that there is a need for drug testing in the pipeline industry. Accordingly, RSPA failed to identify any benefit which would outweigh the burdens imposed by the final rule, thus defeating the Presidential policy of reduc[ing] the burdens of existing and future regulations, increas[ing] agency accountability for regulatory actions * * * and insur[ing] well-reasoned regulations.

the pre-employment testing category and (2) also test positive for drug use are included within the lengthy MRO review and interview procedures for employees described in §199.15. AGA noted that RSPA stated in the preamble that " * * * an employer may not hire * * * anyone to perform certain functions until he or she has passed a drug test. Thus, it is unclear to AGA whether an individual described above is an employee for purposes of MRO review. AGA stated that many natural gas operators refuse to hire employment applicants who test positive and these operators should not be burdened with the requirement of providing expensive MRO services to employment applicants who test positive.

MidCon also raised some of the same arguments as AGA, particularly with respect to the cost of MROs and the need for operators to employ several MROs due to the numerous and often remote locations of manned facilities. El Paso stated that some of the duties ascribed to the MRO are more appropriately the responsibility of the operators EAP counselor or Human Resources Officer. El Paso proposes that an EAP counselor should interview an employee about a confirmed positive test and determine the rehabilitation program required in each case, as well as determine when an employee may return to duty. El Paso suggested that, at most, the MRO interpret the results of a confirmed drug test and that all other duties be the responsibility of the operators EAP counselor, with the exception of scheduling random testing.

RSPA Response. The preamble to the Notice of Proposed Rulemaking (53 FR 25892, July 8, 1988) stated that testing would be required to be carried out according to the DHHS guidelines. Each operator would be required to make sure that any testing conformed to these guidelines. 53 FR 25898. The proposed rule included a notice that the guidelines were available for inspection and copying at RSPA. Commenters thus had the opportunity to comment on the MRO requirements.

RSPA does not agree that the final rule expanded the role of the MRO as established in the DHHS Guidelines. Section 199.15 conforms to the MRO duties in section 40.33 of the DOT Procedures, which are based on the DHHS Guidelines.

Section 199.15 retains the requirement that the MRO be a licensed physician because it requires a physician's medical training with knowledge of substance abuse disorders to interpret an individual's positive test to determine whether an employee who refused to take or did not pass a drug test may return to duty. This requires the skills of a licensed physician to determine whether there is a legitimate medical explanation, including the use of a legally prescribed medication, for the positive test result of an individual. Other duties of the MRO are to receive the results of all drug tests from the laboratory and verify that the laboratory report and assessment of drug test results are correct. The MROs function with respect to negative tests is merely to provide an administrative review to be sure that chain of custody requirements have been met. This responsibility of the MRO is important to assure that the MRO is cognizant of all drug tests to determine the reasonableness of the overall drug test results of the operators personnel. The MRO must report the results of each test to an individual designated by the operator to receive such information.

RSPA does not envision that an operator would need to hire multiple MROs to serve at various locations. An MRO need not be physically present at a particular location to perform his or her duties. For example, an MRO can confer by telephone with an individual to determine if there is a legitimate explanation for a positive result from the laboratory.

In response to AGAs request for clarification, all testing performed under Part 199 must be performed in accordance with the DOT Procedures to ensure that test results are not misused. This means that if an individual is pre-employment tested, the sample must be collected in accordance with the DOT Procedures, subjected to an initial test at an approved laboratory, and if the initial test is positive, subjected to a confirmatory test using gas chromatography/mass spectrometry. If the sample is then confirmed positive, the result must be reported to the MRO for verification of the positive test result, including giving the individual an opportunity to discuss the test results with him or her. If the

INGAA set forth a list of burdens which it believes outweigh the benefits of the anti-drug program. The burdens include: assuming responsibility for testing contractors, contractors employees and subcontractors; establishing at least one collection site with all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping of urine specimens to a certified drug testing laboratory; hiring a collection site person to collect urine samples; having a supervisor available to the collection site person; providing transportation of urine samples from the collection site to the laboratory; arranging to have urine samples tested at a certified laboratory; and hiring a Medical Review Officer, a licensed physician with knowledge of substance abuse, to review laboratory results.

AGA stated that RSPA had not justified the need for the final rule, and did not address the administrative and financial burdens imposed by the final rule, concerning contractor employees, MRO procedures, chain of custody forms, written instructional materials for employees, testing, and permanent records of all tests. AGA also asserted that RSPA had not obtained the required clearance of the Office of Management and Budget (OMB) when the final rule was published in the *Federal Register*.

AGA also identified as another burden the potential conflicts between the final rule and collective bargaining agreements or other employment contracts.

RSPA Response. RSPA carefully considered all of the burdens raised by AGA and INGAA in developing the final rule. The Final Regulatory Evaluation was based on the costs associated with implementing the DOT drug testing program, a program with widely dispersed geographic specimen collection site locations and took into account all of the associated administrative costs, implementation costs, and paperwork costs of carrying out the anti-drug program.

With regard to the AGA and INGAA concerns regarding the widely dispersed geographic collection site locations, RSPA contacted INGAA, AGA, and the American Petroleum Institute regarding the approximate number of pipeline personnel working in each segment of the industry. From this information, RSPA considered that about two-thirds of pipeline personnel subject to these regulations work for distribution operators, and the other one-third work for transmission operators. In addition, about 85 large distribution operators, which serve over 85 percent of the U.S. gas consumers, are located in metropolitan areas, and most of the transmission operators, both hazardous liquid and natural gas, are headquartered in metropolitan areas. Therefore, RSPA believes that about 85 percent of personnel working for distribution operators and over half of the personnel working for transmission operators are in metropolitan areas and not in widely dispersed geographic locations.

The recordkeeping and reporting requirements of the final anti-drug rule were approved by OMB (OMB No. 2137-0579) in accordance with the Paperwork Reduction Act of 1980.

AGAs issue regarding collective bargaining agreements is discussed under Collective Bargaining

Prohibited Drugs. El Paso stated that in addition to the five drugs listed in the final rule it also tests for barbiturates, benzodiazepine, methadone, methaqualone, and opiate derivatives including codeine and heroin. El Paso believes that the five drugs listed in the rule are an appropriate minimum, but because operators may need to tailor their drug screening to the demographics of their workforce, they should be permitted to test for other drugs without being required to seek prior approval from RSPA, and without obtaining a second sample from the employee.

RSPA Response. In accordance with the DOT procedures, RSPA may not grant requests to test for additional drugs unless and until the DHHS has established collection and testing procedures and positive thresholds for the drugs to be added. The DHHS has not established collection and testing procedures applicable to additional drugs, so RSPA cannot provide for the testing of additional drugs at this time. This issue is addressed more fully in the final rule on the DOT Procedures (54 FR 49854). It should be noted that the rule does not prohibit an operator from testing for other drugs if the operator has the independent legal authority to do so and it obtains a second sample.

Miscellaneous Clarifying Changes. Section 199.7 has been changed to clarify that the anti-drug plan must contain procedures for notifying employees of the coverage and provisions of the plan. The discussion in the preamble to the final rule covered this issue but addressing it in the regulations clarifies the requirement.

Section 199.9(b) has been revised to delete references in the rule regarding the requirement for an employee to complete a rehabilitation program before returning to duty. The proposal to require the operator to provide an opportunity for rehabilitation was deleted from the final rule and such rehabilitation is left to the discretion of the operator. This clarifying revision now provides that an employee may return to work after passing a drug test and when the MRO has recommended to the operator that the employee may safely be returned to his or her job.

Economic Assessment

In accordance with the requirements of Executive Order 12291, RSPA reviewed the costs and benefits of the final anti-drug rule published on November 21, 1988. At that time, RSPA prepared a Final Regulatory Evaluation of the final rule. RSPA included that evaluation in the public docket. RSPA also summarized and analyzed the comments submitted by interested persons on the economic issues in the final rulemaking document.

This final rule does not change the basic regulatory structure and requirements promulgated in the final rule and therefore RSPA anticipates little or no costs associated with these minor changes.

Because any potential difference in costs and benefits would be minimal, RSPA has determined that revision of the Final Regulatory Evaluation for the final anti-drug rule is not necessary and preparation of a separate economic analysis is not warranted. This final rule will not result in an annual effect on the economy of \$100 million or more and will not result in a significant increase in consumer prices; thus, the final rule is not a major rule pursuant to Executive Order 1229 [sic]. However, the final anti-drug rule is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) because it involves issues of substantial interest to the public.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a federal agency to review any final rule to assess its impact on small business. RSPA certifies that the amendments contained in this final rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The recordkeeping and reporting requirements of the final anti-drug rule published on November 21, 1988, previously were submitted to the Office of Management and Budget (OMB) and approved in accordance with the Paperwork Reduction Act of 1980. Because this final rule does not amend the recordkeeping and reporting requirements, it is not necessary to amend the prior approvals received from OMB.

Federalism Implications

The final rule adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, RSPA

has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 199

Pipeline safety, Drug testing.

In consideration of the foregoing, RSPA amends 49 CFR part 199 as follows:

PART 199 DRUG TESTING

0 [sic] The authority citation for part 199 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, 2002, and 2040; 49 CFR 1.53

§199.3 [Amended]

- 1 In §199.3, the definition of Rehabilitation committee is removed.
- 2 Section 199.7 is revised as follows:

§199.7 Anti-drug plan.

Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this part and the DOT Procedures. The plan must contain

- (a) Methods and procedures for compliance with all the requirements of this part, including the employee assistance program;
 - (b) The name and address of each laboratory that analyzes the specimens collected for drug testing;
 - (c) The name and address of the operator's medical review officer; and
 - (d) Procedures for notifying employees of the coverage and provisions of the plan.
- 3 Section 199.9 is amended by revising paragraph (b) to read as follows:

§199.9 Use of persons who fail or refuse a drug test.

- • • • •
- (b) Paragraph (a)(1) of this section does not apply to a person who has
- (1) Passed a drug test under DOT Procedures;
 - (2) Been recommended by the medical review officer for return to duty in accordance with §199.15(c); and
 - (3) Not failed a drug test required by this part after returning to duty.
- 4 Section 199.11 is amended by revising paragraphs (b) through (e) to read as follows:

§199.11 Drug tests required.

• • • • •

(b) Post-accident testing. As soon as possible but no later than 32 hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. If an employee is injured, unconscious, or otherwise unable to evidence consent to the drug test, all reasonable steps must be taken to obtain a urine sample. An operator may decide not to test under this paragraph but such a decision must be based on the best information available immediately after the accident that the employees

performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.

(c) Random testing. Each operator shall administer, every 12 months, a number of random drug tests at a rate equal to 50 percent of its employees. Each operator shall select employees for testing by using a random number table or a computer-based random number table or a computer-based random number generator that is matched with an employees social security number, payroll identification number, or other appropriate identification number. However, during the first 12 months following the institution of random drug testing under this part, each operator shall meet the following conditions:

- (1) The random drug testing is spread reasonably through the 12-month period;
- (2) The last test collection during the year is conducted at an annualized rate of 50 percent; and
- (3) The total number of tests conducted during the 12 months is equal to at least 25 percent of the covered population.

(d) Testing based on reasonable cause. Each operator shall drug test each employee when there is reasonable cause to believe the employee is using a prohibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two of the employees supervisors, one of whom is trained in detection of the possible symptoms of drug use, shall substantiate and concur in the decision to test an employee. The concurrence between the two supervisors may be by telephone. However, in the case of operators with 50 or fewer employees subject to testing under this part, only one supervisor of the employee trained in detecting possible drug use symptoms shall substantiate the decision to test.

(e) Return to duty testing. An employee who refuses to take or does not pass a drug test may not return to duty until the employee passes a drug test administered under this part and the medical review officer has determined that the employee may return to duty. An employee who returns to duty shall be subject to a reasonable program of follow-up drug testing without prior notice for not more than 60 months after his or her return to duty.

5. Section 199.15 is amended by republishing paragraph (c) introductory text and by revising paragraphs (c)(3), (c)(4), and (c)(5) to read as follows:

§199.15 Review of drug testing results.

• • • • •

(c) MRO duties. The MRO shall perform the following functions for the operator:

• • • • •

(3) Determine whether and when an employee who refused to take or did not pass a drug test administered under DOT Procedures may be returned to duty.

(4) Determine a schedule of unannounced testing, in consultation with the operator, for an employee who has returned to duty.

(5) Ensure that an employee has been drug tested in accordance with the DOT Procedures before the employee returns to duty.

• • • • •

Issued in Washington, DC, on December 7, 1989.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 89-29186 Filed 12-15-89; 8:45 am]

Amdt. 199-3; Docket No. PS 102

DEPARTMENT OF TRANSPORTATION

**Research and Special Programs
Administration**

49 CFR Part 199

[Docket No. PS-102, Amdt. No. 199-3]

RIN 2137-AB54

Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule; Modification of implementation date.

SUMMARY: The Research and Special Programs Administration (RSPA) announces a delay in the effective date of regulations governing drug testing, insofar as those regulations would require testing of persons for whom a foreign government contends that application of these regulations is not compatible with that country's domestic laws or policies. Under this final rule, these persons must become subject to testing no later than January 2, 1992. This delay of implementation is adopted in order to allow negotiation with foreign governments to continue in an orderly and effective fashion.

EFFECTIVE DATE: This rule is effective December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon, Assistant Director for Regulation, Office of Pipeline Safety, Research and Special Programs Administration (DPS-10) 400 7th Street SW., Washington, DC 20590, (202) 366-1640.

SUPPLEMENTARY INFORMATION: On November 21, 1988, RSPA, along with other agencies of the Department of Transportation, adopted regulations requiring pre-employment, post-accident, reasonable cause and random drug testing (53 FR 47084, 49 CFR part 199). The drug testing required by these rules applies to some persons located outside of the United States. However, the rules provided that they would not apply to any person for whom compliance would violate the domestic laws or policies of another country. The rules provided that 49 CFR part 199 would not be effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of the rule raises questions of compatibility with that country's laws or policies.

At the same time, RSPA stated that the Department of Transportation and other elements of the government would enter into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. We stated that if, as a result of those discussions, we found that an amendment to the rules was necessary, we would issue the amendment by December 1, 1989. On April 13, 1989, RSPA published an amendment to part 199 (54 FR 14922) to provide that the rules would not be effective until January 1, 1991, with respect to such persons. The

amendment clarified that RSPA had intended that the rules provide an additional year to initiate testing in order for government-to-government discussions to reach permanent resolution of this issue. DOT has been conducting active discussions over the last year with representatives of the Canadian government, and has had a preliminary meeting with representatives of the nations of the European Economic Community. The Department has chosen to focus its attention first on discussions with Canada because the rules of five different modal administrations could affect Canadian businesses. Unfortunately, the discussions with the Canadians have not yet been completed. Moreover, since the Department had hoped to be able to use an agreement with Canada as the basis for discussions with other countries, it follows that we have not yet been able to make substantial progress with them.

However, the Department has made progress in its discussions with the Canadians, and has found that there are a number of important issues on which we agree. We therefore continue to believe that, with additional time, we will be able to develop an approach to the problem of drugs in the transportation industry that will be mutually acceptable.

In order to allow that agreement to be reached in an orderly fashion, we have determined that additional time is necessary. Any additional delay of 1 year will, we hope, enable us to achieve an acceptable arrangement on drug deterrence with Canada and other countries. Accordingly, we have determined to postpone the date by which testing programs must commence for persons for whom a foreign country contends that such testing would violate that country's domestic laws or policies to January 2, 1992. This schedule will apply to all such persons, whether or not the affected foreign government has formally notified us of conflicts with their laws and policies. Despite efforts to notify some governments of the need to notify us of any potential conflict with our rules, we believe that some governments may not have made a determination whether a conflict exists. This could place some employers in an untenable position during the pendency of the inter-government discussions. Our action here does not postpone testing for any other person, including U.S.-based employees of American subsidiaries of foreign companies.

This final rule delays the applicability of the part 199 regulations where they may conflict with foreign law or policy. Accordingly, RSPA finds that good cause exists under 5 U.S.C. 553(b) and 553(d) to publish this final rule without notice and comment, and to make it effective less than 30 days after publication in the **Federal Register**.

Regulatory Assessment

This final rule modifies one of the compliance provisions contained in the final rule published on November 21, 1988, as modified on April 13, 1989. It does not change the basic regulatory structure of that rule. The economic impact of these changes is so minimal that further evaluation is not necessary.

Regulatory Flexibility Determination

This final rule modifies the effective date of part 199 only with respect to certain persons for whom a foreign country contends that drug testing would violate that country's laws or policies. Therefore, RSPA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not add to the recordkeeping and reporting burden of the final rule published on November 21, 1988.

Federalism Implications

In accordance with Executive Order 12612, RSPA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 199

Pipeline safety, Drug testing.

In view of the foregoing, RSPA amends 49 CFR part 199 as follows:

PART 199[AMENDED]

1. The authority citation for part 199 continues to read as follows.

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, 2002, and 2040; 49 CFR 1.53

2. Section 199.1(d) is revised to read as follows:

§199.1 Scope and Compliance.

(d) This part is not effective until January 2, 1992, with respect to any person for whom a foreign government contends that application of this part raises questions of compatibility with that country's domestic laws or policies. On or before December 2, 1991, the Administrator will issue any necessary amendment resolving the applicability of this part to such person on and after January 2, 1992.

Issued in Washington, DC, on December 20, 1989

Travis P. Dungan,
Administrator, Research and Special
Programs Administration.
[FR Loc. 89-30014 Filed 12-26-89; 8:45 am]

Amdt. 199-4; Docket No. PS 114

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 192, 193, and 195 and 199

[Docket Nos. PS-114, 190-3, 192-66, 193-7, 195-46, 199-1]

[RIN 2137-AB77]

Amendment of an Operators Plans or Procedures

AGENCY: Research and Special Program Administration (RSPA).

ACTION: Final rule.

SUMMARY: RSPA is making changes in the procedures and policy by which its Office of Pipeline Safety (OPS) addresses alleged deficiencies in operators required plans and procedures. OPS administers a statutory process for amending plans and procedures it finds to be inadequate to achieve safe operations. Until now, this process has required that pipeline operators amend plans and procedures that OPS finds inadequate, but has not subjected operators to other enforcement sanctions. As of the effective date of this action, operators will be subject to all enforcement sanctions under the Natural Gas Pipeline Safety Act of 1968, as amended, and the Hazardous Liquid Pipeline Safety Act of 1979, as amended, for failure to maintain all plans and procedures in accordance with applicable requirements. This action is necessary to assure that operators plans and procedures are adequate to achieve safe operations.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Cesar DeLeon, Assistant Director for Regulation, Office of Pipeline Safety, Research and Special Programs Administration, 400 Seventh Street SW, Washington, DC 20590, (202) 366-1640.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 13 of the Natural Gas Pipeline Safety Act of 1968 (NGPSA) (49 U.S.C. App. 1680), as amended, and section 210 of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSSA) (49 U.S.C. App. 2009), as amended, OPS administers a statutory process for amending operators plans it finds to be inadequate.

On November 6, 1989, OPS published in the Federal Register (54 FR 46684-46685), Docket No. 114, Notice No. 1) a notice of proposed rulemaking to make changes in the procedures and policy by which it addresses deficiencies in operators plans and procedures. Because the statutory process was

implemented in parts 193 and 195 only, OPS proposed to make the procedures and policy in those parts applicable to operators plans and procedures under parts 192 and 199 as well. To accomplish this, OPS proposed to move the current procedures found in 49 CFR 195.402(b) and 193.2017(b) (with appropriate modification) to a new 49 CFR 190.9, which would be applicable to all plans and procedures in Parts 192, 193, 195, and 199. OPS also proposed to strengthen its enforcement of the adequacy of these plans and procedures by subjecting operators to the assessment of civil penalties (and criminal penalties if a violation is committed knowingly and willfully), and any other appropriate sanction. Both civil penalty and criminal sanctions are available under either the NGPSA (49 U.S.C. App. 1671 et seq.) or the HLPSSA (49 U.S.C. App. 2001 et seq.). OPSs enforcement of the adequacy of written plans and procedures had previously been restricted to requiring that pipeline operators amend their plans and procedures. Comments to the notice of proposed rulemaking were due on or before December 6, 1989.

Comments Received

OPS received 19 comments: one from a state agency, three from trade associations, seven from utilities, and eight from pipeline companies. Four commenters supported the proposal.

Three commenters, who suggested changes, asked that an operator be given the opportunity to present evidence of its ongoing program to correct any alleged inadequacies in its plans and procedures before the Director of OPS (Director) makes a determination concerning adequacy. RSPA is making no changes to the proposed rule based on this comment. If an operator has corrected, or is in the process of correcting, the alleged inadequacies in its plans or procedures when it receives a notice of amendment, the operator need only include this information in its written comments, or present it at a hearing conducted at the operators request. The final rule states that only after considering all material presented in writing or at the hearing may the Director determine the adequacy of the operators plans and take further action. Nevertheless, the correction of inadequate plans or procedures subsequent to an OPS inspection does not preclude the Director from making a determination that the original plans were inadequate. The information concerning the operators correction efforts will be considered by the Director in determining what further action, if any, is necessary to assure the safe operation of the pipeline facility.

These three commenters also questioned the deletion of the phrase new information from the proposed revision of 49 CFR 190.211, concerning the issues operators intend to raise when requesting a hearing. RSPA is making no changes based on this comment. The proposed revision reads: The issues may relate to the allegations in the notice, the proposed corrective action, or the proposed civil penalty amount. Because any new information must relate to the allegations in the notice, the proposed corrective action, or the proposed civil penalty amount, including new information as a specific category is unnecessary. Operators will not be precluded from providing OPS with additional information at the time a hearing is requested.

Nine commenters considered the proposed rulemaking to be unnecessary. One stated that it would result in changing operators user-friendly procedural manuals into highly technical documents containing legal jargon, thereby destroying the usefulness of these manuals. RSPA disagrees. Merely strengthening OPSs enforcement of an operators written plans and procedures should not lead to an elimination of the user-friendly format. Until now, OPSs enforcement of the adequacy of written plans and procedures has been restricted to the amendment process. Restricting enforcement to the amendment process has had the effect of limiting the enforcement tools available to the Department in addressing the quality and effectiveness of operators plans and procedures, which are the foundation of sound operations. Consequently, RSPA must have the widest latitude to assure that operators develop plans and procedures that comply with applicable safety requirements, and that operators comply with

to achieve safe operation of pipeline facilities, the Secretary or state agency, after notice and opportunity for a hearing, has the authority to require that such plan be revised. Thus, the statute confers this authority. However, this authority may not be clearly expressed in state regulatory schemes except in part 193 as adopted by the state. The provisions contained in part 190 are only applicable to RSPAs enforcement proceedings, are not generally adopted by states and, therefore, would not be useful to the states. Therefore, RSPA will leave this expression of authority to mandate amendment in part 193 and is revising parts 192, 195, and 199 to clarify this authority in those areas.

Since the language in 49 CFR 193.2017(b) is being left in the regulations, RSPA is modifying that section to clarify which state agencies have the authority.

Finally, one commenter argued that if adopted, the proposed rulemaking should be incorporated under 49 CFR part 190, subpart B Enforcement, rather than subpart A General. The proposed 49 CFR 190.9 was contained in the general subpart; RSPA agrees that adding the proposed revision to the enforcement subpart is appropriate. The stated purpose and scope of subpart A is to prescribe the procedures, such as service of documents and subpoenas, that are applicable to enforcement proceedings under subpart B. The section added by this final rule subjects operators to enforcement sanctions and should be included in subpart B. Accordingly, in the final rule, we are adding this section to subpart B of part 190 by creating a new §190.237.

Miscellaneous

We are making minor language changes to the proposed rule for clarity and to reflect that the amendment is added to subpart B of part 190 instead of subpart A. Also, to reflect the delegation of authority from the Administrator of RSPA to the Director of OPS, RSPA is adding the latter change to §190.203(d) in two places.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Effective Date

This rule is effective August 8, 1991.

Impact Assessment

RSPA has analyzed this rule and has determined that it is not a major rule, within the meaning of Executive Order 12291. It will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. We have also determined that this rule is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034-11045 (Feb. 26, 1979)). Because the rule contains no substantive revisions that could be expected to require significant changes in operator procedures or compliance burdens, and because the economic impact will be minimal, a full regulatory evaluation is not required.

Accordingly, I certify, pursuant to 5 U.S.C. 605 regarding the Regulatory Flexibility Act, that this action will not have a significant economic impact on a substantial number of small entities.

§190.211 Hearing.

(a) A request for a hearing provided for in this part must be accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations in the notice, the proposed corrective action (including a proposed amendment, a proposed compliance order, or a proposed hazardous facility order), or the proposed civil penalty amount. A respondents failure to specify an issue may result in waiver of his right to raise that issue at the hearing. The respondents request must also indicate whether or not he will be represented by counsel at the hearing.

* * * *

4. In §190.233, paragraph (a) is revised to read as follows:

§190.233 Hazardous facility orders.

(a) Except as provided by paragraph (b) of this section, if the Director, OPS, finds, after reasonable notice and opportunity for hearing in accordance with paragraph (c) of this section and §190.211(a), a particular pipeline facility to be hazardous to life or property, he shall issue an order pursuant to this section requiring the owner or operator of the facility to take corrective action. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action, as appropriate.

* * * *

5. Section 190.237 is added to read as follows:

§190.237 Amendment of plans or procedures.

(a) A Region Chief, OPS, begins a proceeding to determine whether an operators plans or procedures required under parts 192, 193, 195 and 199 of this subchapter are inadequate to assure safe operation of a pipeline facility by issuing a notice of amendment. The notice shall provide an opportunity for a hearing under §190.211 of this part and shall specify the alleged inadequacies and the proposed action for revision of the plans or procedures. The notice shall allow the operator 30 days after receipt of the notice to submit written comments or request a hearing. After considering all material presented in writing or at the hearing, the Director, OPS, shall determine whether the plans or procedures are inadequate as alleged and order the required amendment if they are inadequate, or withdraw the notice if they are not. In determining the adequacy of an operators plans and procedures, the Director, OPS, shall consider:

- (1) Relevant available pipeline safety data;
 - (2) Whether the plans or procedures are appropriate for the particular type of pipeline transportation or facility, and for the location of the facility;
 - (3) The reasonableness of the plans or procedures; and
 - (4) The extent to which the plans or procedures contribute to public safety.
- (b) The amendment of an operators plans or procedures prescribed in paragraph (a) of this section is in addition to, and may be used in conjunction with, the appropriate enforcement actions prescribed in this Subpart.

PART 192[AMENDED]

8. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 1672 and 1804; 49 CFR 1.53.

15. Section 199.7 is amended by revising paragraph (b) to read as follows:

§199.7 Anti-drug plan.

* * * * *

(b) The Administrator or the State Agency that has submitted a current certification under section 5(a) of the Natural Gas Pipeline Safety Act or section 205(a) of the Hazardous Liquid Pipeline Safety Act with respect to the pipeline facility governed by an operators plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

* * * * *

Issued in Washington, DC on July 1, 1991.

Travis P. Dungan,
Administrator, Research and Special Programs Administration
[FR Doc. 91-16068 Filed 7-8-91; 8:45 am]

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 192, 193, 195, and 199

[Docket No. PS-114; Amdts. 190-3, 192-66, 193-7, 195-46, and 199-4]

RIN 2137-AB77

Amendment of an Operators Plans or Procedures; Correction

AGENCY: Research and Special Programs Administration (RSPA),
DOT.

ACTION: Notice of correct agency number.

SUMMARY: This notice corrects the agency number of FR Doc. 91-16068, published in the **Federal Register** on July 9, 1991 (56 FR 31087). The agency number heading (in brackets) on page 31087, is changed to read Docket No. PS-114; Amendments 190-3, 192-66, 193-7, 195-46, and 199-4.

Issued in Washington, DC on July 16, 1991.

George W. Tenley, Jr.,
Associate Administrator for
Pipeline Safety.
[FR Doc. 91-17246 Filed 7-18-91; 8:45 am]

Amdt. 199-5; Docket No. PS-102

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS-102, Amendment No. 199-5]

RIN 2137-AC05

Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; Modification of implementation date.

SUMMARY: RSPA announces a delay in the effective date of regulations governing drug testing, insofar as those regulations would require testing of persons located outside the territory of the United States. Under this final rule, these persons must become subject to testing no later than January 2, 1993. This delay of implementation is adopted to allow negotiation with foreign governments to continue in an orderly and effective fashion.

EFFECTIVE DATE: This final rule is effective April 24, 1991.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon, Director Regulatory Programs, Office of Pipeline Safety, Research and Special Programs Administration (DPS-10), 400 7th Street, SW., Washington, DC 20590, (202) 366-1640.

SUPPLEMENTARY INFORMATION: On November 21, 1988, RSPA, along with other agencies of the Department of Transportation, adopted regulations requiring pre-employment, post-accident, reasonable cause and random drug testing (53 FR 47084, 49 CFR part 199).

The drug testing required by these rules applies to some persons located outside of the United States. However, the rules provided that they would not apply to any person for whom compliance would violate the domestic laws or policies of another country. The rules provided that 49 CFR part 199 would not be effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of the rule raises questions of compatibility with that country's laws or policies.

At the same time, RSPA stated that the Department of Transportation and other elements of the U.S. government would enter into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. We stated that if, as a result of those discussions, we found that an amendment to the rules was necessary, we would issue the amendment by December 1, 1989.

On April 13, 1989, RSPA published an amendment to Part 199 (Amdt. No. 199-1; 54 FR 14922) to provide that the rules would not be effective until January 1, 1991, with respect to such persons. A

similar amendment was published on December 27, 1989, extending the effective date until January 2, 1992 (Amdt. No. 199-3; 54 FR 53290). These amendments provided additional time to initiate testing while government-to-government discussions tried to reach permanent resolution of this issue.

DOT has continued active discussions over the last year with representatives of the Canadian government and representatives of the nations of the European Economic Community. The Department's initial efforts in this area were focused on discussions with Canada because the rules of five different modal administrations could affect Canadian businesses. During the past year the Government of Canada completed a process under which it received and considered the recommendations and concerns of the House of Commons Standing Committee on Transport, as well as representations from the Canadian transportation industry and other interested Canadians, on a substance use policy. The culmination of that effort was an announcement by the Minister of Transport on November 7, 1990, of the Government of Canada's decision to proceed with what he describes as a comprehensive series of measures to prevent and remedy substance use in safety-sensitive positions in the Canadian transportation network. The policy includes requirements for education, access to employee assistance programs, and alcohol and drug testing. The Government of Canada must now draft the necessary legislation and regulations and expects to be able to implement the program in the near future.

Because the requirements will apply to American companies operating in Canada, the Canadian Minister of Transport has asked the U.S. Secretary of Transportation to consider the idea of a mutual recognition agreement. Senior officials from the U.S. and Canadian governments met on November 15, 1990, to discuss the new Canadian measures on substance use and the possibility of the mutual recognition agreement. The U.S. expects to complete its review of the matter in the very near future.

During the past year, discussions with other countries also have been held, and the difficulty of achieving effective bilateral agreements has become clear. Although the DOT could allow its regulations to take effect even for operations outside the U.S., the Department recognizes that (1) it would be difficult for U.S. carriers to effectively implement the regulations without cooperation from foreign governments; (2) in response, foreign governments could impose restrictions on U.S. operations; and, perhaps most importantly, (3) there are distinct advantages to be gained in aligning foreign measures and U.S. measures, especially as they relate to international transportation operations. For these reasons the U.S. has decided to pursue multilateral efforts; specifically, the U.S. has already begun exploring the possibility of initiatives in the International Civil Aviation Organization and the International Maritime Organization on the problem of substance use. The U.S. will be making every effort to expedite the handling of these matters.

To allow decisions and agreements to be reached in an orderly fashion, we have determined that additional compliance time is necessary. An additional delay of approximately one year should provide sufficient time. Accordingly, this final rule postpones the date by which testing programs must commence for persons located outside the territory of the United States to January 2, 1993. Our action here does not postpone testing for any other person, including U.S.-based employees of American subsidiaries of foreign companies.

This final rule delays the applicability of the part 199 regulations for persons located outside the territory of the United States. Accordingly, RSPA finds that good cause exists under 5 U.S.C. 553(b) and 553(d) to publish this final rule without notice and comment, and to make it effective less than 30 days after publication in the **Federal Register**.

Regulatory Assessment

This final rule modifies one of the compliance provisions contained in the final rule published on November 21, 1988, as modified on April 13, 1989, and on December 27, 1989. It does not change

the basic regulatory structure of that rule. The economic impact of these changes is so minimal that further evaluation is not necessary.

Regulatory Flexibility Determination

This final rule modifies the effective date of part 199 only with respect to persons outside the territory of the United States. Therefore, RSPA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not add to the recordkeeping and reporting burden of the final rule published on November 21, 1988.

Federalism Implications

In accordance with Executive Order 12612, RSPA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 199

Pipeline safety, Drug testing.

In view of the foregoing, RSPA amends 49 CFR part 199 as follows:

PART 199[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, 2002, and 2040; 49 CFR 1.53

2. Section 199.1(d) is revised to read as follows:

§199.1 Scope and compliance.

(d) This part is not effective until January 2, 1993, with respect to any employee located outside the territory of the United States.

Issued in Washington, DC on April 16, 1991.

Travis P. Dungan,
Administrator, Research and Special
Programs Administration.
[FR Doc. 91-9551 Filed 4-23-91; 8:45 am]

Amdt. 199-6; Docket No. PS 114

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS-114; Amdts. 190-3, 192-66, 193-7, 195-46, and 199-4]
(Printed as 199-4, Should have been 199-6)

RIN 2137-AB77

Amendment of an Operators Plans or Procedures; Correction

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Final rule; correction of amendatory instruction

SUMMARY: This document corrects an amendatory instruction of FR Document 91-16068, published in the **Federal Register** on July 9, 1991, (56 FR 31087). On page 31091, amendatory instruction 15 is changed to read as follows:

15. Section 199.7 is amended by redesignating paragraphs (a) through (d) as (1) through (4), respectively; designating the introductory text as paragraph (a); and adding paragraph (b) to read as follows:

EFFECTIVE DATE: August 19, 1991.

FOR FURTHER INFORMATION CONTACT: Cesar DeLeon, Assistant Director for Regulation, Office of Pipeline Safety, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-1640.

(49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, 2002, and 2040; 49 CFR 1.53)

Issued in Washington, DC, on August 13, 1991.

Travis P. Dungan,
Administrator, Research and Special
Programs Administration.
[FR Doc. 91-19580 Filed 8-16-91; 8:45 am]

Docket PS-102; Amdt. 199-7

Coast Guard

46 CFR Part 16

[CGD 86-0671]

RIN 2115-AD74

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Delay of Implementation Dates

AGENCIES: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard announces a delay in the effective date of regulations governing drug testing, insofar as those regulations would require testing of persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government. Under this final rule, employees must become subject to testing no later than January 2, 1995. This delay of implementation is adopted in order to allow negotiation with foreign governments to continue in an orderly and effective fashion.

EFFECTIVE DATE: This rule is effective July 14, 1992.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Mark Grossetti, Project Manager, Marine Investigation Division (G-MMI), Office of Marine Safety, Security and Environmental Protection, (202) 267-1421.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Mark Grossetti, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Helen Boutrous, Project Counsel, Office of Chief Counsel.

Background and Purpose

On November 21, 1988, the Coast Guard, along with other agencies of the Department of Transportation (DOT), adopted regulations requiring pre-employment, post-accident, reasonable cause and random drug testing. Those individuals required under Federal law or regulation to have periodic medical examinations were also required to undergo a drug test at the same time. The drug testing required by the rule applies to some persons located outside of the United States. However, the rules provided that they would not apply outside the United States in any situation in which application of the rules violated foreign local laws or policies.

At the same time, the Coast Guard stated that the DOT and other elements of the government

would enter into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. The Coast Guard stated that if, as a result of those discussions, it was found that amendments to the rule were necessary, timely amendments would be issued. An amendment was issued on December 21, 1989, and published on December 27, 1989 (54 FR 53286). Under that amendment, drug testing for persons onboard U.S. vessels in waters subject to the jurisdiction of a foreign government was scheduled to begin by January 1992. A Final Rule was published on April 24, 1991, delaying the implementation date to January 2, 1993 (56 FR 18982).

DOT has continued active discussions over the last two years with representatives of the Canadian Government, and with representatives of the nations of the European Community. The DOT's initial efforts in this area were focused on discussions with Canada, because the rules of five different modal administrations could affect Canadian businesses. The Government of Canada completed a process under which it received and considered the recommendations and concerns of the House of Commons Standing Committee on Transport, as well as representations from the Canadian transportation industry and other interested Canadians, on a substance use policy. The culmination of this effort was an announcement by the Minister of Transport on November 7, 1990, on the Government of Canada's decision to proceed with what he describes as a comprehensive series of measures to prevent and remedy substance use in safety-sensitive positions in the Canadian transportation network. The policy includes requirements for education, access to employee assistance programs, and alcohol and drug testing. The Government of Canada is continuing to work on necessary legislation and regulations to implement the program.

Because the requirements will apply to American companies operating in Canada, the Canadian Minister of Transport has asked the U.S. Secretary of Transportation to consider the idea of a mutual recognition agreement. Senior officials from the U.S. and Canadian governments met on November 15, 1990, to discuss the new Canadian measures on substance use and the possibility of the mutual recognition agreement, and discussions are continuing.

During the past two years, discussions with other countries also have been held, and the difficulty of achieving effective bilateral agreements has become clear. Although the DOT could allow its regulations to take effect even for operations outside the U.S., the DOT continues to recognize that: (1) It would be difficult for U.S. carriers to effectively implement the regulations without cooperation from foreign governments; (2) in response, foreign governments could impose restrictions on U.S. operations; and, perhaps most importantly, (3) there are distinct advantages to be gained in aligning foreign measures and U.S. measures, especially as they relate to international transportation operations. For these reasons, the U.S. is continuing to pursue multilateral efforts; specifically, the U.S. is exploring the possibility of initiatives in the International Civil Aviation Organization and the International Maritime Organization on the problem of substance abuse.

In order to allow decisions and agreements to be reached in an orderly fashion, the Coast Guard has again determined that additional time is necessary. Another additional delay of approximately two years should provide sufficient time. Accordingly, the Coast Guard has determined to postpone again the date by which testing programs must commence for persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government.

The change in this final rule will delay the applicability of the regulations where they may conflict with foreign law or policy so that the DOT and other elements of the government can complete discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. Accordingly, the Coast Guard finds that good cause exists under 4 U.S.C. 533(b) to publish this rule without notice and comment and to make this rule effective less than 30 days after publication in the *Federal Register*.

This final rule is not major under Executive Order 12291. However, because of public interest in, and concern for, a drug-free transportation environment, this final rule is considered significant under the DOT regulatory policies and procedures (44 CFR 11034; February 26, 1979). The economic impact of these changes is so minimal that further evaluation is not necessary. This final rule modifies the effective date for compliance with Coast Guard regulations governing drug testing, insofar as those regulations would require testing of persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government. It does not change the basic regulatory structure of that rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. Small entities include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as small business concerns under section 3 of the Small Business Act (15 U.S.C. 632). The amendment in this final rule only extends a compliance date. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The authority to require programs for chemical drug and alcohol testing of commercial vessel personnel has been committed to the Coast Guard by Federal statutes. This final rule does, therefore, preempt State and local regulations regarding drug testing programs requiring the testing of persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government.

Environment

The Coast Guard has considered the environmental impact of this final rule, and has concluded that, under section 2.B.2.1 of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. This final rule merely extends an implementation date.

International Trade Impact

This final rule extends that date by which an employer must ensure that employees outside the United States are in compliance with the final rule issued on November 21, 1988. Thus, the Coast Guard has determined that this final rule will not have an impact on trade opportunities on U.S. firms doing business overseas or on foreign firms doing business in the United States.

List of Subjects in 46 CFR Part 16

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, the Coast Guard amends 46 CFR part 16 as follows:

PART 16 CHEMICAL TESTING

1. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

2. Section 16.207(b) is revised to read as follows:

§16.207 Conflict with foreign laws.

(b) This part is not effective until January 2, 1995, with respect to any person onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government. On or before December 1, 1994, the Commandant shall issue any necessary amendment resolving the applicability of this part to such person on and after January 2, 1995.

Dated: June 10, 1992.

R.C. North,
Captain, U.S. Coast Guard Acting
Chief, Office of Marine Safety, Security
and Environmental Protection.
[FR Doc. 92-16356 Filed 7-13-92; 8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 25148; Amendment No. 121-229]

RIN 2120 AE76

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Federal Aviation Administration (FAA) announces a delay in the effective date of the anti-drug rule for persons located outside the territory of the United States. Under this final rule, employees located outside the territory of the United States will be subject to the provisions of the

combat substance abuse, unilateral imposition of the requirements of the anti-drug rule would be premature and counter-productive. Accordingly, the FAA is postponing by two years the date on which the anti-drug rule becomes effective with respect to persons located outside the territory of the United States. The FAA notes, however, that while the rule will not become effective with respect to these employees until January 2, 1995, it will be incumbent upon affected employers to ensure that, sometime prior to the effective date, they have appropriate plans submitted to the FAA for implementation on that date.

Availability of the Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must include the amendment number identified in this final rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Reason for No Notice

This amendment to the anti-drug rule merely defers for two years the effective date of the anti-drug rule for persons located outside the territory of the United States. This minor change reflects the commitment made in the preamble to the final rule to delay the effective date further * * * if such delay is necessary to permit consultation with any foreign governments to be successfully completed (53 FR 46050; November 21, 1988). The FAA concludes that issuing a notice of proposed rulemaking would not result in the receipt of significant comments. Accordingly, the FAA has determined that notice and public comment procedures are unnecessary and contrary to public interest.

Economic Assessment

In accordance with the requirements of Executive Order 12291, the FAA reviewed the costs and benefits of the final anti-drug rule issued on November 14, 1988. At that time, the FAA prepared a comprehensive Regulatory Impact Analysis of the final anti-drug rule. The FAA also summarized and analyzed the comments submitted by interested persons on the economic issues in the final rulemaking document published in the **Federal Register** on November 21, 1988.

This amendment defers the effective date of the anti-drug rule for persons located outside the territory of the United States, but does not change the basic regulatory structure and requirements promulgated in the final anti-drug rule. The FAA is taking this action to provide additional time to pursue multilateral initiatives and negotiations with foreign governments on implementation of the anti-drug rule outside the territory of the United States. The FAA has also determined that costs and benefits associated with this rule will be minimal, and therefore has determined that a revision of the comprehensive Regulatory Impact Analysis is not necessary and the preparation of a separate economic analysis for this amendment is not warranted.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a Federal agency to review any final rule to assess its impact on small business. The amendment contained in this final rule merely extends by two years

the effective date of the rule outside the territory of the United States. In consideration of the nature of this amendment, the FAA has determined that the final rule will not have a significant economic impact, positive or negative, on a substantial number of small businesses.

International Trade Impact Statement

This final rule contains an amendment that defers until January 2, 1995, the effective date of the anti-drug rule issued on November 21, 1988, with respect to employees located outside the territory of the United States. The FAA has determined that this final rule will not have an impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the United States.

Paperwork Reduction Act Approval

The recordkeeping and reporting requirements of the final anti-drug rule, issued on November 14, 1988, were previously submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1980. The OMB approval is under control number 2120-0535. Because this final rule does not amend the recordkeeping and reporting requirements, it is not necessary to amend the prior approval received from OMB.

Federalism Implications

The final rule adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Conclusion

This action defers the effective date of the anti-drug [rule] for employees located outside the territory of the United States. This rulemaking action is intended to improve administration of the final anti-drug rule.

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is considered significant under Order DOT 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. Because of the absence of any costs related to this amendment, the FAA has determined that the expected impact of this amendment is so minimal that it does not warrant a full regulatory evaluation.

List of Subjects in 14 CFR Part 121

Air carriers, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Aviation safety, Drug testing, Narcotics, Pilots, Reporting and recordkeeping requirements, Safety, Transportation.

motor carriers. Under this final rule, these persons must be tested no later than January 2, 1995. This delay is being adopted to allow negotiation with foreign governments to continue in an orderly and effective fashion.

DATES: This final rule is effective July 14, 1992. Compliance with requirement to test foreign-based employees of foreign-domiciled carriers for drug use is extended until January 2, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, Office of Motor Carrier Standards (202) 366-2981, or Mr. David Sett, Office of the Chief Counsel (202) 366-1392, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On November 21, 1988, the FHWA, along with other agencies of the Department of Transportation, adopted regulations requiring pre employment/use, periodic, post-accident, reasonable cause and random drug testing.

The drug testing required by these rules applies to some persons located outside of the United States. However, the rules provided that they would not apply to any person for whom compliance would violate the domestic laws or policies of another country. The rules provided that 49 CFR part 391 would not be effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of the rules raises questions of compatibility with that country's laws or policies, 53 FR 47134 (November 21, 1988).

On September 27, 1989, the FHWA issued a delay to the effective date to January 1, 1991, 54 FR 39546 (September 27, 1989).

On December 27, 1989, the FHWA published a revision to its drug testing rule to indicate that the rule would not be effective until January 2, 1992, with respect to any foreign-based employee of a foreign-domiciled carrier, 54 FR 53294 (December 27, 1989).

On April 24, 1991, FHWA published a revision to its drug testing rule to indicate that the rule would not be effective until January 2, 1993, with respect to any foreign-based employee of a foreign-domiciled carrier, 56 FR 18994 (April 24, 1991).

The Department of Transportation and other elements of the U.S. Government have entered into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. The additional time that the FHWA is allowing would permit the Department to try to achieve our goals of a drug-free transportation system while respecting the national sovereignty of other countries.

In addition, this extension would comply with the intent of Congress in a recent Congressional mandate passed in October 1991. The Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V. This Act directs the Secretary of Transportation and the Secretary of State to discuss controlled substances and alcohol use testing with the International Civil Aviation Organization (ICAO), and to determine ways and means to accomplish the strengthening and enforcing of existing ICAO standards. The intent of Congress is to allow the Department to have further discussions with other countries. The FHWA is continuing multilateral discussions with Canada and Mexico to allow motor carriage of freight throughout these countries as unencumbered as possible.

To allow these discussions to progress in an orderly fashion, the FHWA and the DOT have determined that additional compliance time is necessary. An additional delay of approximately two years should provide sufficient time. Accordingly, this final rule postpones the date by which testing programs must commence for persons located outside the territory of the United States to January 2, 1995, including foreign-based employees of American companies (or their foreign subsidiaries.) This action does not postpone testing for any other person, including U.S.-based employees of foreign

companies, including their American subsidiaries.

This delay is being adopted to allow negotiations with foreign governments to continue in an orderly and effective fashion. Further notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information. Therefore, the FHWA finds good cause exists to publish this final rule without notice and comment, and to make it effective upon publication in the **Federal Register**.

Rulemaking Analyses and Notices

Regulatory Impact

The action taken by the FHWA in this document defers the effective date that the FHWA's controlled substances testing rules will apply to foreign-based employees of foreign-domiciled motor carriers. This delay is being adopted to allow discussions with foreign governments to continue in an orderly and effective fashion. The FHWA, therefore, finds good cause to promulgate the amendment as a final rule without prior notice and opportunity to comment.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. However, the FHWA considers this document to be significant because of public interest in the drug testing program and the international impact of this document.

Regulatory Flexibility Act

It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required. For this reason and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rules does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

Federal Railroad Administration

49 CFR Part 219

[FRA Docket No. RSOR-6, Notice No. 33]

RIN 2130-AA43

Alcohol/Drug Regulations: Postponement of International Application

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA issues a final rule delaying to January 2, 1995, the application of random drug testing requirements to railroad personnel based outside the United States. This delay in implementation is adopted in order to allow negotiation with foreign governments to continue in an orderly and effective fashion.

DATES: This final rule is effective on July 14, 1992.

ADDRESSES: Any petition for reconsideration should be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel (RCC-30), FRA, room 8201, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Patricia V. Sun, Trial Attorney (RCC-30), FRA, Washington, DC 20590 (Telephone: (202) 366-4002).

SUPPLEMENTARY INFORMATION: On November 21, 1988, the Federal Railroad Administration published random drug testing requirements, 53 FR 47102. The random testing rule amended §219.3 of the existing rule to provide that subpart G of the regulation does not apply to any person for whom compliance with the subpart would violate the domestic laws or policies of another country and to provide that the random testing rule (subpart G) would not apply until January 1, 1990, with respect to certain foreign operations. On May 23, 1989, FRA amended the applicability provisions dealing with operations of foreign railroads (54 FR 22284; May 23, 1989) by extending to January 1, 1991, the date on which Subpart G would become effective with respect to any employee whose place of reporting or point of departure for rail transportation services is located outside the United States. In order to provide additional time for negotiations with foreign governments, FRA subsequently issued two more rules, the last of which extended this compliance date further to January 1, 1993, 58 FR 18990, April 24, 1993. (Operations of foreign carriers have been subject to FRA alcohol/drug regulations other than random testing since implementation in 1986, 49 CFR part 219; 50 FR 31508; Aug. 2, 1985. This applicability is not affected by the action discussed here.)

The Department's initial efforts in this area were focussed [sic] on discussions with Canada, because the rules of five different modal administrations could affect Canadian businesses. During the past year, discussions with other countries also have been held, and the difficulty of achieving effective bilateral agreements has become clear. Although the DOT could allow its regulations to take effect even for operations outside the U.S., the Department recognizes that (1) it would be difficult of U.S. carriers to effectively implement the regulations without cooperation from foreign governments; (2) in response, foreign governments could impose restrictions on U.S. operations; and, perhaps most importantly, (3)

there are distinct advantages to be gained in aligning foreign measures and U.S. measures, especially as they relate to international transportation operations. For these reasons, the U.S. has decided to pursue multilateral efforts.

In order to facilitate this process, FRA is postponing application of the random drug testing requirements to foreign-based personnel until January 2, 1995. This schedule will apply to all such foreign operations, whether or not there have been formal notifications of conflicts with local law or policy. The postponement does not affect testing of U.S.-based employees.

Regulatory Procedures

FRA finds that notice and opportunity for comment are not necessary because the effect of the amendment is to provide additional time for compliance. FRA also finds that providing such notice would be contrary to the public interest because of the need to conduct ongoing international negotiations in an atmosphere of comity and cooperation. FRA finds that there is good cause for making this amendment effective less than 30 days from publication, since its effect is to provide additional time for compliance.

This rule has been evaluated in accordance with existing regulatory policies. It is not a major rule under Executive Order 12291 but is significant as defined under DOT policies and procedures. The amendment contained in the final rule does not have any significant paperwork, Federalism or economic impact. To the extent any such impact exists, the amendments will lessen regulatory burdens by increasing the time available to comply with regulations previously issued. Because the amendments do not have any significant economic impact, FRA has not prepared a regulation evaluation. It is certified that this final rule will not have significant economic impact on a substantial number of small entities under the provisions of Regulatory Flexibility Act (5 U.S.C. 60 et seq.).

Therefore, in consideration of the foregoing, part 219, title 49, Code of Federal Regulations is amended as follows:

List of Subjects in 49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

PART 219 [AMENDED]

1. The authority citation for part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. No. 100-342; and 49 CFR 1.49(m).

2. Section 219.3 is amended by revising paragraph (c) to read as follows:

§219.3 Application.

(c)(1) Subpart G of this part shall not apply to any person for whom compliance with that subpart would violate the domestic laws or policies of another country.

(2) Subpart G is not effective until January 2, 1995, with respect to any employee whose place of reporting or point of departure (home terminal) for rail transportation services is located outside the

territory of the United States.

Issued in Washington, DC, on June 29, 1992.
Gilbert E. Carmichael,
Federal Railroad Administrator.
[FR Doc. 92-16359 Filed 7-13-92; 8:45 am]

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket PS-102; Amdt. No. 7]

RIN 2137-AC

Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Final rule; modification of implementation date.

SUMMARY: RSPA announces a delay in the effective date of regulations governing drug testing insofar as those regulations would require testing of persons located outside the territory of the United States. Under this final rule, these persons must become subject to testing no later than January 1, [sic] 1995.

EFFECTIVE DATE: July 14, 1992.

FOR FURTHER INFORMATION CONTACT: Richard L. Rippert, Alcohol and Drug Program Manager, Office of Pipeline Safety Enforcement (DPS-23), Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590 (Tel. 202-366-6223).

SUPPLEMENTARY INFORMATION: On November 21, 1988, RSPA, along with other agencies of the Department of Transportation, adopted regulations requiring pre-employment, post-accident, reasonable cause, and random drug testing (53 FR 47084).

The drug testing required by these rules applies to some persons located outside of the United States. However, the rules provided that they would not apply to any person for whom compliance would violate the domestic laws or policies of another country. The rules provided that 49 CFR part 199 would not be effective until January 1, 1990, with respect to any person for whom foreign government contends that application of the rule raises questions of compatibility with that country's laws or policies.

At the same time, RSPA stated that the Department of Transportation and other elements of the U.S. government would enter into discussions with foreign governments to attempt to resolve any conflict

Drug testing, Pipeline safety, Reporting and recordkeeping requirements, Safety, Transportation.

In view of the foregoing, 49 CFR part 199 is amended as follows:

PART 199[AMENDED]

1. The authority citation for part 199 is revised to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 18008, and 2002; 49 CFR 1.53.

2. Section 199.1(d) is revised to read as follows:

§199.1 Scope and compliance.

• • • • •

(d) This part is not effective until January 2, 1995, with respect to any employee located outside the territory of the United States.

Issued in Washington, DC, on July 2, 1992.

Douglas B. Ham,
Acting Administrator, Research and
Special Programs Administration.
[FR Doc. 92-16360 Filed 7-13-92; 8:45 am]

Amdt. 199-8; Docket No. PS-129

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

Federal Highway Administration

49 CFR Part 391

Federal Railroad Administration

49 CFR Parts 217 and 219

Research and Special Programs Administration

49 CFR Part 199

Coast Guard

46 CFR Part 16

RIN 2105-AB81; 2120-AC33; 2125-AC81; 2130-AA64; 2137-AB95; 2115-AD84

Management Information System (MIS) For workplace Drug Testing Programs

AGENCIES: Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Research and Special Programs Administration (RSPA), and United States Coast Guard (USCG), DOT

ACTION: Final rules; common preamble.

SUMMARY: This document is a common preamble to five final rules being published by several operating administrations of the Department of Transportation (FAA, FHWA, FRA, RSPA & USCG) elsewhere in today's issue of the **Federal Register**. The Department needs employer drug testing program data in order to address policy and program issues relative to the anti-drug rules effectiveness. The FAA, FHWA, FRA, RSPA, and USCG final rules are published elsewhere in today's **Federal Register**. These final rules require employers conducting drug testing to maintain and/or submit drug testing program data to the DOT Agency which has regulatory authority over the employer. This data will enhance the Department's ability to assess program effectiveness and compliance.

EFFECTIVE DATE: Effective generally, January 1, 1994. See separate OAs rules for specific date.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Smith, Acting Director, Office of Drug Enforcement And Program Compliance, Department of Transportation, 400 7th St. SW., room 9404.

2. Complexity of MIS

Since the Department is implementing the MIS prior to the issuance of final rules on alcohol prevention programs, alcohol testing program data elements have been removed from the MIS forms, except for the two OAs that currently have alcohol testing requirements (FRA and USCG). The Department is still considering adding alcohol testing data reporting requirements to the final alcohol testing rules required by the Omnibus Transportation Employee Testing Act of 1991. Eventually, the Department hopes to combine both drug and alcohol program data in a single MIS report form for each OA where practical.

The Department has attempted to minimize the MIS reporting burden on employers. In response to the comments and the findings from the pilot project, the Department has identified additional ways to reduce the complexity of the MIS report forms and instructions, and, therefore, the burden on employers. The critical data elements needed by the Department and its OAs have been retained, while the format, organization and some of the proposed data elements have been consolidated and simplified, resulting in shorter forms. To ease the reporting burden on employers that have no positive test results we have developed simplified E-Z forms.

In response to the Departments inquiry, a significant number of commenters indicated that they would prefer (or were interested in) electronically submitting the required data to the OAs. Therefore, the Department is committed to developing and providing a system that will allow employers to submit their reports electronically. The OAs final rules specify the electronic systems currently available for employers reporting or plans for development of such. It is the Departments intention that all OAs will eventually provide a system for electronic reporting.

3. Methodology

Commenters generally supported the need for the Department and its OAs to acquire anti-drug program data. Some commenters suggested that there may be other, less burdensome ways to acquire the data, such as obtaining the data from OAs audits of employers programs. We considered this method, but the cost, both to the Federal government and the employers, and the reduced utility of such data make this infeasible. Data derived from ongoing inspections and audits would not cover common timeframes (such as a calendar year) unless collection of a previous years data was used. For example audits conducted in 1995 would collect only 1994 data, leading to considerable time lag in evaluating program data. In addition, audit or inspection data would represent a significantly reduced sample of industry since the audit force could not annually audit the approximately one million employers that are covered by the rules. Audit samples are often biased, because they focus on employers who have poor safety records or against whom complaints have been lodged.

The Department requested a comment on the possibility of using a two-tiered system of reports. Under this methodology, some employers could have been required to report on the complete set of data elements and some on a reduced set. Only two comments specifically addressed this issue and both stated that a two-tier system would be too complex and unworkable. The Departments efforts to develop a workable two-tiered process did lead to development of the E-Z form described earlier, for use by employers whose drug testing programs have no positive test results.

Some commenters suggested requiring drug testing laboratories to report drug testing data to DOT and to survey some Medical Review Officers (MROs). The Department and its OAs already have access to aggregated laboratory data but it is not definitive (i.e., specific to each employer and regulated industry), and, therefore, does not meet the Departments oversight needs. Laboratory data would not be useful because it includes quality control specimen data and confirmed positive test results that have

of implementing anti-drug programs. Most commenters did not address this issue, but of the ones that did, most supported reporting cost data. A few stated that cost data would be useless or inappropriate. Some commenters stated that it would be difficult to compile cost data and to standardize how it would be reported. Others stated that it would have utility, but that it should come from industry, consortia groups or associations, not individual employers.

While the Department believes cost data on the mandated elements of drug testing programs (specimen collection, laboratory testing, employee training, and MRO services) would be useful in assessing program effectiveness and cost-efficiency, difficulties in standardizing how much information would be computed and interpreted, reduce its utility and increase the burden for employers. OA rules preambles further discuss this issue. The final rules do not require cost data reporting.

6. Data on Employee Drug Abuse Prevention Training

Employee training and education are very important in substance abuse prevention programs. The Department has included MIS data elements to report employee training conducted to meet an OAs requirement or to enhance workplace anti-drug programs. Each OA anti-drug rule requires employers to provide drug awareness training or education for covered employees and specific training for supervisors who make reasonable suspicion test determinations. In general, commenters to the NPRM on this issue stated that final rules should require MIS data only for the training mandated in the OAs rules. Each OA rule addresses the specific training data requirements applicable to its regulated employers.

Some commenters recommended deleting the data element on actions taken in response to refusal-to-test. The reason given is that the OA rules require employers to remove from safety sensitive duties a person who refuses to take a drug test. Therefore, other employer actions (i.e., termination, suspension, transfer) would be beyond the scope of the rule. Some of the participants in the pilot test of the MIS also supported deleting this data element, citing that information on the number of refusals-to-test was sufficient. Three of the OAs have decided to drop this reporting element and monitor this area through other means. Two of the OAs (RSPA and FAA) have decided to retain the requirement to report personnel actions imposed in verified positive and refusal-to-test circumstances. The preambles to the FAA and RSPA final rules discuss this issue in detail.

7. Analysis of Changes In The Final Rules

The following general changes from the proposed rules have been made in the OAs final rules:

- (a) In response to concerns raised by commenters, the MIS report submission data is changed from February 15 to March 15;
- (b) The requirement for reporting data element (3), which proposed, in part, to require periodic testing data, may be deleted if the particular OA no longer requires periodic testing or does not require reporting of that data element.
- (c) In response to comments and findings from the pilot project, the data element on actions taken in response to a refusal to submit to a drug test, has been withdrawn from some OAs final rules. Where it has been retained, the OA preamble to its final rule discusses the issue, including justification for retaining the requirement.
- (d) The OAs rules contain the MIS forms to be used by employers subject to their rules. The forms include modifications to the instructions and the forms based on the comments and pilot project findings from employers and other respondents. OA rules will discuss requirements for

employers to report data on employees that are covered by two or more OA regulations.

(e) Each OA rule except the USCG's provides a standard, simplified E-Z MIS report form for use by employers whose drug testing programs have no verified positive tests. The USCG's MIS form has been simplified to the point that they have determined a separate E-Z form is not necessary.

Taking into account these changes, as well as changes to current programs contained in the rules as proposed, the DOT operating administrations estimate a new increase of approximately 12,500 burden hours of increased recordkeeping and reporting burden as compared with comparable DOT OA information collection requirements for drug testing programs currently in place. On balance, this represents less than a 1% increase over current levels. While there is a considerable reduction in some individual OAs have made substantial efforts to minimize information collection burdens through the means discussed in this preamble and the preambles to the final rules of the individual OAs.

Regulatory Process Matters

Each of the OA MIS rule preambles separately addresses a number of administrative matters concerning compliance with administrative requirements in statutes, executive orders and Departmental policies and procedures. Readers should refer to the individual OA rules for statements specific to each rule.

Paperwork Reduction Act

The proposed information collection requirements contained in the notices of proposed rulemaking were reviewed by the Office of Management and Budget (OMB) under section 3504(H) of the Paperwork Reduction Act (44 U.S.C. 3501 et. Seq.). Revisions of the information collection requirements contained in the final rules have been submitted to OMB for final approval. A **Federal Register** notice will be published when that approval has been obtained.

Common Preamble for the Management Information System (MIS) Final Rules.

Issued on December 13, 1993 in Washington, D.C.

Federico Pea,

Secretary of Transportation.

David R. Hinson,

Administrator, Federal Aviation
Administration.

Rodney E. Slater,

Administrator, Federal Highway
Administration.

S. Mark Lindsey,

Acting Administrator, Federal
Railroad Administration.

Rose A. McMurray,

Acting Administrator, Research and
Special Programs Administration.

The OST NPRM proposed that MIS reports would require specific drug testing data elements on standardized forms and these items were outlined in 49 CFR part 40, §40.81. OST has elected not to amend Part 40 by adding the provisions as proposed in §40.81. The MIS requirements for operator reporting are set forth in this final rule. Elsewhere in today's **Federal Register** is a common preamble to this and other DOT agency MIS final rules which addresses the common issues relevant to the MIS requirements for the transportation industries.

The OST NPRM proposed that operators with employees who fall under two or more DOT agency regulations requiring drug testing shall submit data to each agency for those employees covered by that agency rule. Under this final rule, employees who perform functions covered by more than one DOT agency shall be identified by the operator as to which covered function they will be reported under. Drug testing data on dual covered employees shall be reported to RSPA and/or any other appropriate DOT agency.

Discussion of Comments

The comment period for RSPAs NPRM closed on April 14, 1993, and all comments received were considered, as well as, the testimony of 16 individuals who presented statements at the three public hearings held on February 26, 1993, in Washington, DC; on March 2, 1993, in Chicago, Illinois; and on March 5, 1993, in San Francisco, California, respectively. RSPA received 46 comments in response to the NPRM, including comments from 36 pipeline operators, three industry associations, two consortia, one state agency, and four from individuals. The majority of the commenters had no objection to the basic concept of the MIS drug test reporting requirements as proposed. Several commenters indicated that submission of such drug testing data to RSPA would support their position that substance abuse in the pipeline industry is not widespread and that random test rates should be lowered. A number of the commenters provided detailed comments on proposed changes to the MIS report format which included such items as streamlining the reporting format, limiting the number of data elements, and suggested submission dates for the reports.

Specific Issues

Covered Employees Categories

Several commenters indicated that requiring operators to identify and report separately on employees who perform operation, maintenance, or emergency-response functions would place an undue burden on operators and provide no visible benefit to RSPA. They believe this requirement would increase the recordkeeping requirements for operators and increase associated costs of maintaining records. Many operators, such as the Columbia Gas Distribution companies, indicated that the overlap of job categories make it very difficult for operators to distinguish these job categories.

RSPA Response

RSPA has determined that requiring operators to classify employees by separate covered employee categories, as proposed, is not feasible given the general overlap of employee functions among the numerous operators within the pipeline industry. Therefore, the reporting format has been revised to use one category, covered employees, representing all individuals who perform operation, maintenance, or emergency-response functions on the pipeline.

Report Format

Many commenters were opposed to one or more of the reporting elements proposed in the NPRM. Comments submitted by Exxon and the Interstate Natural Gas Association of America (INGAA) addressed several areas of the form that they contended would present an undue burden in the collection and reporting of data. These comments included objections to the proposed employee categories outlined: dual coverage/reporting for employees covered by other DOT agencies; and, the requirement to submit annual reports no later than February 15th. Some operators objected to the size and complexity of the report format and the numerous detailed instructions required to complete the form. One consortium indicated that costs of designing software and implementing this type of informational software into the current drug management programs would be immense. Another consortium, which represents numerous small operators and municipalities, suggested that consortia should be allowed to report on behalf of the companies they serve, thus reducing the paperwork required. Many operators provided suggested changes and modifications to reduce the recordkeeping and reporting burden.

RSPA Response

RSPA has incorporated some of these refinements into the final MIS report forms, which appear as exhibits A and B to this final rule. RSPA has eliminated the requirement to report separately the covered employees functions. To reduce the reporting burden on operators who have no verified positive test results, RSPA has limited the information to be provided and has developed a simplified E-Z form for submitting their reports.

RSPA has also reduced some of the MIS reporting burden on operators in this final rule based on information developed from the MIS pilot project. A notice published on February 8, 1993, (58 FR 7506) sought volunteer participation of pipeline operators to evaluate the proposed MIS forms and submission procedures. The MIS pilot project was coordinated with OST and the other DOT operating administrations. Seven operators were selected and received the MIS packages. Of the seven, six operators were interviewed. Three of the operators did not complete the data collection forms, so only four collection forms were available for analysis. The findings and conclusions from the pilot project have been considered in the development of this final rule. A copy of the summarized findings has been placed in the RSPA NPRM docket number PS-129.

The MIS pilot concluded that drug testing data availability is good for operators testing under the RSPA rule; however, there are some data that cannot be provided due to overlap in employee function. Periodic testing is not required by the RSPA rule. Finally, covered employee training and refresher training are not required by the RSPA drug testing rule.

Instead of including the reporting forms as an appendix to Part 199, as proposed in the NPRM, RSPA is requiring data to be submitted to RSPA in the standard form and manner prescribed by the Administrator. The current MIS report forms are published in today's **Federal Register** as exhibits A and B immediately following this rule. RSPA has determined that while the drug testing data elements are properly a matter of regulation, the format in which the data are reported should remain within the discretion of the Administrator. This will enable RSPA to make any revisions to the format that become necessary without undertaking additional rulemaking.

RSPA has also decided to issue separate final rules on the drug and alcohol portions of the MIS. Therefore, alcohol testing program data elements are not included in this final rule or on the reporting forms. Alcohol testing MIS reporting requirements would be included in a final rule to implement alcohol misuse prevention programs. Separation of the drug and alcohol data elements should reduce the burden associated with the use of a new form.

Reporting Burden on Small Operators

Some commenters opposed the extensive reporting requirements being proposed by RSPA. They indicated no justification for an approach that relies heavily on submitting all records to RSPA for review. One operator stated that it does not believe that comprehensive data from all operators is required for RSPA to evaluate the effectiveness of the program. They suggested that RSPA could determine what could comprise a representative sample of the industry and request specific data from particular operators for purposes of making an evaluation.

RSPA Response

RSPA has determined that approximately 2,419 operators would be subject to the reporting provisions of this final rule. RSPA estimates that approximately one-third of these operators have fewer than 50 employees performing covered functions. RSPA believes that excluding these small operators from the reporting requirement would not adversely effect the overall drug testing data that would represent the pipeline industry. From time to time RSPA would survey these small operators and require them to prepare and submit such reports to this agency. This data would be analyzed and compared with data being submitted by the large operators.

Therefore, RSPA is not requiring small operators (50 or fewer covered employees) to submit annual MIS reports, at this time. The final rule includes a provision requiring small operators to submit data to RSPA upon request. If at some future time, RSPA decides that annual data submission from small operators is necessary, RSPA would undertake additional rulemaking.

Submission Date

Numerous commenters, including Southern Natural Gas, Hope Gas Inc. and INGAA, recommended that the date for the submission of the MIS reports be revised. A wide variety of dates and reasons was suggested. Many operators are subject to other reporting requirements by other federal and state regulatory agencies and many of these reports, as well as the year-end financial statements, are due at approximately the same time as the proposed February 15 deadline. The commenters indicated that adding a month to the proposed submission date should alleviate some of the administrative burdens associated with the numerous reporting obligations of the operators.

RSPA Response

RSPA agrees that allowing operators until March 15 to submit their annual MIS drug testing reports will not affect the timeliness of the data and will allow sufficient time for operators to compile and prepare their reports. The final rule establishes a March 15 due date.

Contractor Statistical Data

RSPA's NPRM discussed several issues regarding the inclusion of a contractors drug testing statistical data in an operators MIS drug report. RSPA sought comments on whether RSPA should defer for the first year the requirement that pipeline operators report information on contractor employees drug testing results. RSPA was concerned about any potential difficulties in collecting data from contractors and consortia. RSPA was also concerned about multiple reports with duplicative information from contractors being submitted by the various operators for whom the contractor may perform services.

The majority of the commenters were opposed to requiring operators to collect and submit contractor employee drug testing statistical data. The American Gas Association (AGA) contends that

Many operators have questioned RSPAs requirement to maintain the age of applicants/employees who test positive or refuse to test under the current regulations. They contend that collection of this data element provides no beneficial data.

RSPA Response

RSPA has revised the record-keeping requirements in § 199.23(a)(2) to avoid duplicative information collection requirements. Section 199.23(a)(2) requires operators to keep certain records on employees who have a positive drug test result, including the type of test, and records that demonstrate rehabilitation, if any. The required information includes:

- (i) The functions performed by the employee;
- (ii) The prohibited drug(s) used;
- (iii) Disposition of the employee; and
- (iv) The age of the employee.

The MIS report will require operators to maintain and report the information currently required in items (i)-(iii), as well as the type of test. RSPA has eliminated from record-keeping or reporting requirements the fourth item concerning the age of each employee who failed a drug test. RSPA does not believe this is an essential data element.

Reason for Expedited Effective Date

This rule is being made effective in less than the 30 days from publication otherwise required by law. With an effective date of January 1, 1994, RSPA can ensure that information is collected under this final rule for calendar year 1994 and, subsequently, that the benefits from this final rule are realized without delay. Because the first report under this rule will not be due until March 15, 1995, and most of the data must be maintained under pre-existing regulatory requirements, operators subject to this rule will not be unduly burdened by an effective date of less than 30 days. RSPA has therefore determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) to warrant an expedited effective date.

Regulatory Analyses and Notices

E.O. 12866 and DOT Regulatory Policies and Procedures

The final rule is part of a package of alcohol and drug testing regulation that is a significant regulatory action under Executive Order 12866. It has been reviewed under this order. It is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because it is of substantial public interest. This final rule would cause minimal changes in the existing compliance burden and cost of the anti-drug programs affected by the amendment. Therefore, we have not further evaluated the costs and benefits of this final rule.

Paperwork Reduction Act

The final rule sets forth new drug program information collection requirements. These requirements have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. Chap. 35) and 5 CFR Part 1320. See common preamble on status of Paperwork Act approval.

Regulatory Flexibility Act

The final rule affects all entities subject to part 192, except operators of master meter systems and liquefied petroleum gas (LPG) operators, 193, or 195, which are exempt. Master meter systems and LPG operators constitute the bulk of small businesses or other small entities that operate gas pipeline systems subject to part 192. There are few, if any, small entities that operate hazardous liquid or carbon dioxide pipelines subject to part 195, or LNG facilities subject to part 193. Therefore, I certify under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this final rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612

This regulation will not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987), RSPA has determined that this regulation does not have sufficient federalism implications to warrant preparation of Federalism Assessment.

List of Subjects in 49 CFR Part 199

Pipeline safety, Drug testing, Recordkeeping and reporting.

In consideration of the foregoing, RSPA is amending 49 CFR part 199 as follows:

PART 199 DRUG TESTING

1. The authority citation for Part 199 is revised to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, and 2002; 49 CFR 1.53.

2. Section 199.1 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 199.1 Scope and compliance.

(a) * * * However, this subpart does not apply to operators of master meter systems as defined in §191.3 of this chapter or to liquefied petroleum gas (LPG) operators.

* * * * *

3. Section 199.23 is amended by revising paragraph (a)(2) to read as follows:

§199.23 Recordkeeping.

(a) * * *

(2) Records of employee drug test results that show employees who had a positive test, and the type of test (e.g., post-accident), and records that demonstrate rehabilitation, if any, must be kept for at least 5 years, and include the following information:

- (i) The function performed by each employee who had a positive drug test result.

- (ii) The prohibited drug(s) that were used by an employee who had a positive drug test
- (iii) The disposition of each employee who had a positive drug test or refused a drug test (e.g., termination, rehabilitation, removed from covered function, other).

* * * * *

- 4. Part 199 is amended by adding a new section 199.25 to read as follows:

§199.25 Reporting of anti-drug testing results.

(a) Each large operator (having more than 50 covered employees) shall submit an annual MIS report to RSPA of its anti-drug testing results in the form and manner prescribed by the Administrator, not later than March 15 of each year for the prior calendar year (January 1 through December 31). The Administrator shall require by written notice that small operators (50 or fewer covered employees) not otherwise required to submit annual MIS reports to prepare and submit such reports to RSPA.

(b) Each report, required under this section, shall be submitted to the Office of Pipeline Safety Compliance (OPS), Research and Special Programs Administration, Department of Transportation, room 2335, 400 Seventh Street, SW., Washington, DC 20590.

(c) Each report shall be submitted in the form and manner prescribed by the Administrator. No other form, including another DOT Operating Administrations MIS form, is acceptable for submission to RSPA.

(d) Each report shall be signed by the operators anti-drug program manager or designated representative.

(e) Each operators report with verified positive test results or refusals to test shall include all of the following informational elements:

- (1) Number of covered employees.
- (2) Number of covered employees subject to testing under the anti-drug rules of another operating administration.
- (3) Number of specimens collected by type of test.
- (4) Number of positive test results, verified by a Medical Review Officer (MRO), by type of test and type of drug.
- (5) Number of employee action(s) taken following verified positive(s), by type of action(s).
- (6) Number of negative tests reported by an MRO by type of test.
- (7) Number of persons denied a position as a covered employee following a verified positive drug test.
- (8) Number of covered employees, returned to duty during this reporting period after having failed or refused a drug test required under the RSPA rule.
- (9) Number of covered employees with tests verified positive by an MRO for multiple drugs.
- (10) Number of covered employees who refused to submit to a random or non-random (post-accident, reasonable cause, return-to-duty, or follow-up) drug test and the action taken in response to each refusal.
- (11) Number of supervisors who have received required initial training during the reporting period.

(f) Each operators report with only negative test results shall include all of the following informational elements:

- (1) Number of covered employees.

Amdt. 199-9; Docket No. PS 128

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS-128,
Amdt. No. 199-9]

RIN 2137-AC21

Alcohol Misuse Prevention Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule sets forth regulations requiring operators of gas, hazardous liquid and carbon dioxide pipelines and liquefied natural gas (LNG) facilities subject to the pipeline safety regulations to implement alcohol misuse prevention programs for employees who perform safety-sensitive functions. This final rule is consistent with the alcohol rules of other operating administrations (OAs) published elsewhere in today's **Federal Register**, except that RSPA is not requiring pre-employment or random testing. The final rule requires only post-accident, reasonable suspicion, return-to-duty, and follow-up testing. This rule requires operators to remove from safety-sensitive functions employees who engage in prohibited alcohol conduct, and not permit them to return to those functions until specific requirements are met. Operators must provide covered employees with written materials that specifically identify the employees covered by the rule, explain the requirements of the rule, and establish the consequences of engaging in prohibited conduct. Operators must maintain records concerning their programs and report data regarding employee alcohol misuse to RSPA annually. The rules are intended to ensure an alcohol-free workplace, and increase the overall safety of pipeline operations.

EFFECTIVE DATE: This rule is effective March 17, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Rippert, Office of Pipeline Safety Compliance, RSPA, DOT, 400 Seventh Street, SW., Washington, DC 20590-0001 (202 3666223); or the RSPA Dockets Unit, (202) 366-4453, for copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

On December 15, 1992, RSPA published a Notice of Proposed Rulemaking (NPRM) (57 FR 59712) to require pipeline operators of gas, hazardous liquid and carbon dioxide pipelines and liquefied natural gas (LNG) facilities, who are subject to 49 CFR part 192, 193, or 195, to implement alcohol misuse

prevention programs for employees who perform certain covered functions. The NPRM proposed to exempt from the alcohol rules operators of "master meter systems" and "liquefied petroleum gas" (LPG) operators.

The comment period on the NPRM closed on April 14, 1993, and all comments received were considered, including the testimony of 16 individuals who presented statements at the three public hearings held on February 26, 1993, in Washington, DC; on March 2, 1993, in Chicago, Illinois; and on March 5, 1993, in San Francisco, California. RSPA received written comments from 108 persons including 75 pipeline operators, eight pipeline industry associations, seven individuals, five labor unions, four state agencies, three contractors, two consortiums, two vendors, one law firm and one Federal agency. All written comments, as well as the hearing transcripts and any statements or other materials submitted at the hearings, have been placed in the docket.

OST Common Preamble

As part of the DOT-wide alcohol misuse prevention rulemaking effort DOT issued a common preamble to all of the related NPRMs that were published on December 15, 1993 (57 FR 59382, et seq.). The common preamble precedes this document in today's **Federal Register** and should be read first to ensure a complete understanding of today's substantive final rule. This common preamble contains a thorough discussion of the comments submitted to the DOT alcohol docket and responds to comments submitted to the various DOT agency dockets that raised multi-modal aspects of the final rules or the Act.

Discussion of Comments

Authority for RSPA Regulation of Alcohol Misuse.

The majority of the commenters strongly objected to the mandatory imposition of alcohol misuse regulations, as proposed for the pipeline industry. They contended that: (1) Alcohol testing of pipeline operators is not required under the provisions of the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act); (2) the pipeline industry has an excellent safety record; (3) RSPA lacks a factual basis or statistical data that would support a finding of any alcohol-related pipeline accidents; and (4) the proposed alcohol regulations would violate the Fourth Amendment of the Constitution. However, some commenters expressed support for inclusion of a limited alcohol testing program consisting of post-accident and reasonable suspicion testing elements and support for development of a "pilot or demonstration" alcohol program to be conducted by RSPA and various pipeline industry associations. The pilot program would be implemented by operators to develop statistical data which would support the need for an extensive alcohol testing program or data that would indicate implementation of a limited alcohol misuse prevention program was more feasible for the entire industry.

Most commenters opposed the proposed alcohol program, or suggested modifications to tailor the program to the needs of the pipeline industry. Several commenters noted that the pipeline industry is not covered by the Omnibus Act. Commenters stated that there is no indication that there is an alcohol problem in the pipeline industry, and thus there is no justification for imposing Federal regulation. Commenters also stated that pipelines pose different safety risks than other forms of public transportation because they do not carry passengers.

RSPA Response. RSPA is today issuing a final rule on alcohol testing based on its own existing statutory authority to promote safety and to ensure general application of DOT's alcohol misuse regulations to all employees performing safety-sensitive functions in the transportation industries. The

of master meter systems or LPG operators. The terms "covered functions" and "safety-sensitive functions" as used here and in the common preamble are synonymous and refer to the performance of an operation, maintenance, or emergency-response function performed on a pipeline or an LNG facility. The term "safety-sensitive function" is used in the Omnibus Transportation Employee Testing Act to describe functions which employees perform.

Operators may combine their RSPA drug and alcohol programs. This final rule is consistent with the other OA rules in order to minimize, to the extent possible, any compliance burden for operators subject to the rules of more than one OA. Because RSPA is not imposing pre-employment testing, the definition of a "covered employee" does not include an applicant for employment.

In the NPRM, RSPA solicited comment on five issues regarding implementation of the proposed alcohol regulations. The questions and comments are summarized below:

1. Are there covered functions the performance of which appears to sufficiently implicate safety to warrant regulating alcohol-related conduct and imposition of a testing requirement?

Several commenters indicated support for requiring only post-accident and reasonable suspicion testing to be mandated by RSPA. Many commenters indicated that pre-employment, random, and return-to-duty were costly and unnecessary as proposed in the NPRM. The commenters supported the current definition of "employee" in the drug testing regulations, and stated that the definition should not be expanded. RSPA agrees that the proposed definition of "employee" is adequate and has not expanded it. As discussed above, the final rule does not require either pre-employment or random testing.

2. Do pipeline operators have any data on the size of the population that would be affected and the incidence of alcohol misuse by this population?

Many operators stated they currently have company-mandated alcohol testing policies in place. These provisions cover testing in post-accident and reasonable suspicion situations. Some commenters indicated zero incidence of alcohol misuse. During the development of the drug testing regulations, many commenters suggested that RSPA include alcohol testing as a tested substance in any required testing program. They also pointed out that alcohol is probably the substance most abused by the public. As discussed above, the lack of data in the pipeline industry does not mean that there is not a problem with alcohol misuse. Therefore, RSPA is requiring a limited alcohol misuse program for the pipeline industry.

3. What additional costs would be incurred by inclusion of other functions and what would be the offsetting benefits (e.g., in terms of accident prevention, productivity, employee lost time)?

Many commenters agreed that increasing the scope of covered employees, especially if random testing were implemented, would substantially increase the costs associated with the regulations. Administrative costs and employee lost time would be increased. Furthermore, inconsistencies develop if alcohol regulations are implemented and differences in scope of coverage between the drug and alcohol testing programs were to occur. This would lead to drug and alcohol testing programs covering different employees. Therefore, the final alcohol rule applies to the same covered functions as the drug rule.

4. Does the industry or public have any information on alcohol-related accidents?

Many commenters argued that RSPA, DOT and the National Transportation Safety Board (NTSB) have no statistical data to support alcohol-related accidents. Some commenters believe that in the absence of a comprehensive factual analysis, it is unreasonable to conclude that all the proposed types of federally-mandated alcohol testing should be required in the pipeline industry. As discussed above, RSPA has carefully evaluated all facets of the alcohol testing regulations including the required types of testing, categories of covered employees, costs associated with implementation of a testing program and the societal benefits. RSPA has determined that implementation of a limited alcohol testing program is appropriate.

5. Are there other ways that RSPA could reduce the burden on small operators?

Many commenters believe that a limited program such as post-accident and reasonable suspicion testing could be effectively implemented and would not adversely affect the numerous small gas operators. They suggested that allowing the use of non-evidential breath testing devices for screening would lower the overall costs of the entire program. Several commenters suggested that operators with less than 50 employees be excluded from the requirements of alcohol testing. To reduce the burden on small entities, the final rule exempts master meter operators and LPG operators. For all other operators, the final rule eliminates the requirement for random and pre-employment testing. In addition, RSPA has determined that small operators (50 or fewer covered employees) should be excluded from the annual submission of an alcohol MIS report to lessen the burden. RSPA will periodically conduct a sampling of the small operators alcohol programs. Discussion of alternatives for testing methods devices is contained in the common preamble published elsewhere in today's **Federal Register**. Although DOT is not permitting the use of non-evidential breath testing devices, the final rule permits the use for screening of certain evidential devices that are less costly and in the future will allow use of other devices (for screening) that we approve as meeting DOT criteria.

Reasonable Suspicion Testing

Many commenters indicated they were frustrated by use of the phrase "reasonable suspicion" for alcohol testing when the term "reasonable cause" is used in the drug testing regulations. Some commenters supported the NPRM proposal that a supervisor who makes the determination that reasonable suspicion exists to test a covered employee shall not conduct the breath alcohol test on that employee, if another supervisor is readily available. Other commenters indicated that alcohol testing should not be conducted by supervisors, but should be handled by the operator's contract collectors.

RSPA Response. RSPA considers the two terms to be synonymous. The term "reasonable suspicion" is used in the Omnibus Act, and for consistency with other OA alcohol rules, this final rule uses the term "reasonable suspicion." RSPA will consider amending the drug rules to adopt the same terminology. RSPA is concerned about the potential for abuse and harassment of an employee, if the same supervisor who makes the determination that reasonable suspicion exists also conducts the breath test on the employee. Therefore, RSPA has revised this provision to stipulate that the supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

Pre-Duty Use. The NPRM proposed to require each operator to prohibit a covered employee from using alcohol within four hours prior to performing safety-sensitive functions. The final rule adopts an amended provision that prohibits using alcohol within four hours prior to performing covered functions, or within the period of time after an employee has been notified to report to duty to respond to an emergency. In the pipeline industry, an operator commonly has only a limited number of employees or a single employee qualified and available to respond in an emergency situation. In such a case, an employee may be in an unofficial "on-call" status. For example, an employee who finished work for the day and returned home, had a beer at 6:00 p.m., and was called at 8:00 p.m. to respond to an emergency, would be prohibited from using alcohol from 8:00 p.m. until completion of the safety-sensitive duties. This provision is intended to be used only for emergency situations where an operator has no other recourse. Even in an emergency situation, however, if an operator notifies an employee to report, and the operator believes the employee cannot perform because he or she is impaired by alcohol, the operator should not permit the employee to perform safety-sensitive functions.

matter of regulation, the format in which the data are reported should remain within the discretion of the Administrator. This will enable RSPA to make any revisions to the format that become necessary without undertaking additional rulemaking. Because RSPA does not have regulatory authority over consortia, the final rule requires operators to submit MIS reports. An operator may make arrangements with a consortium to provide data to the operator in whatever format the operator desires, but the responsibility for submitting drug and alcohol MIS reports to RSPA remains with the operator.

Contractor Compliance

The NPRM proposed that contractor employees should be included in the group of employees that must undergo alcohol misuse testing because their job performance is no less critical than the performance of employees who work directly for operators. RSPA proposed limiting the employees, including contractors, covered by the alcohol misuse rule to those who perform operation, maintenance, or emergency response functions, on the pipeline or LNG facility, that are regulated under part 192, 193, or 195. Seven commenters indicated that RSPA should exclude contractor employees from the definition of "employee." Some commenters suggested that RSPA should be responsible for ensuring that contractor employees are in compliance with parts 40 and 199.

RSPA Response. RSPA believes that contractor employees must be included in the group of employees subject to the alcohol misuse provisions. The performance of safety-sensitive functions by contract employees is no less critical than the performance of the employees who work directly for operators.

Advisory Committee Reviews

Section 4(b) of the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1673(b)), and Section 204(b) of the Hazardous Liquid Pipeline Safety Act of 1979, as amended (Pub. L. 97-468, January 14, 1983), each provide that proposed amendments to safety standards established under the statutes be submitted to the pipeline advisory committees for consideration. Of the 14 ballots received, 12 were in favor of implementing an alcohol misuse prevention program and 2 were opposed. The advisory members comments indicate they are generally in favor of an alcohol testing prevention program for the pipeline industry which has limited testing provisions (post-accident and reasonable suspicion) such as those discussed in this final rule.

In January 1993, copies of the NPRM were mailed to each member of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee. On November 29, 1993, RSPA mailed additional copies of the NPRM to each member, and requested that the committees vote by mail on the proposals in the NPRM, and provide any additional comments.

Regulatory Analyses and Notices

E.O. 12866 and DOT Regulatory Policies and Procedures

The final rule is a significant regulatory action under Executive Order 12866, and has been reviewed under that order. It is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because it is of substantial public interest. A regulatory evaluation is available for review in the docket. RSPA has evaluated the industry-wide costs and benefits relating to the implementation of the alcohol misuse prevention program for pipeline operators. RSPA has

calculated the total cost of this program for the first year to be \$1,876,270. The exclusion of pre-employment and random testing from the final rule has provided a substantial reduction in the total cost of the alcohol program. We have projected yearly program costs of \$186,407, with a slight increase every third year to allow for major equipment overhaul which would project a total program cost of \$258,907. The total 10-year program costs are estimated to be \$3,806,745. The total 10-year discounted costs are projected to be \$3,270,684 (uses net present value at 7%).

RSPA believes that major cost benefits will accrue from this rule, including the prevention of potential injuries, fatalities and property losses resulting from accidents attributed to alcohol misuse, and improved worker productivity and estimates the savings to be \$15,344,000.

Paperwork Reduction Act

The final rule sets forth new alcohol misuse prevention program requirements and includes information collection requirements subject to the Paperwork Reduction Act. These requirements have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and 5 CFR Part 1320. Information collection requirements are not effective until Paperwork Reduction Act clearance has been received.

Regulatory Flexibility Act

The final rule affects all entities subject to part 192, 193, or 195, except operators of master meter systems and liquefied petroleum gas (LPG) operators, which are exempt. Master meter systems and LPG operators constitute the bulk of small businesses or other small entities that operate gas pipeline systems subject to part 192. There are few, if any, small entities that operate hazardous liquid or carbon dioxide pipelines subject to part 193, or LNG facilities subject to part 195. Therefore, I certify under Section 605 of the Regulatory Flexibility Act (5 U.S.C.) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612

This regulation will not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), RSPA has determined that this regulation does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 199

Alcohol testing, Drug testing, Pipeline safety, Recordkeeping and reporting
In consideration of the foregoing, RSPA is amending 49 CFR Part 199 as follows:
1. The title for Part 199 is revised to read as follows:

PART 199 - DRUG AND ALCOHOL TESTING

2. The authority citation for part 199 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, and 2002; 49 CFR 1.53

3. Sections 199.1 through 199.25 are designated as subpart A, and subpart B is added to read as follows:

Subpart B Alcohol Misuse Prevention Program

Sec

- 199.200 Purpose.
- 199.201 Applicability.
- 199.202 Alcohol misuse plan.
- 199.203 Alcohol testing procedures.
- 199.205 Definitions.
- 199.207 Preemption of state and local laws.
- 199.209 Other requirements imposed by operators.
- 199.211 Requirement for notice.
- 199.213 Starting date for alcohol testing programs.
- 199.215 Alcohol concentration.
- 199.217 On-duty use.
- 199.219 Pre-duty use.
- 199.221 Use following an accident.
- 199.223 Refusal to submit to a required alcohol test.
- 199.225 Alcohol tests required.
- 199.227 Retention of records.
- 199.229 Reporting of alcohol testing results.
- 199.231 Access to facilities and records.
- 199.233 Removal from covered function.
- 199.235 Required evaluation and testing.
- 199.237 Other alcohol-related conduct.
- 199.239 Operator obligation to promulgate a policy on the misuse of alcohol.
- 199.241 Training for supervisors.
- 199.243 Referral, evaluation, and treatment.
- 199.245 Contractor employees.

Subpart B Alcohol Misuse Prevention Program

§199.200 Purpose.

The purpose of this subpart is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform covered functions for operators of certain pipeline facilities subject to parts 192, 193, or 195 of this chapter.

§199.201 Applicability.

This subpart applies to gas, hazardous liquid and carbon dioxide pipeline operators and liquefied natural gas operators subject to parts 192, 193, or 195 of this chapter. However, this subpart does not apply to operators of master meter systems defined in §191.3 or liquefied petroleum gas (LPG) operators as discussed in §192.11 of this chapter.

§199.202 Alcohol misuse plan.

Each operator shall maintain and follow a written alcohol misuse plan that conforms to the requirements of this subpart and the DOT procedures in Part 40 of this title. The plan shall contain methods and procedures for compliance with all the requirements of this subpart, including required testing, recordkeeping, reporting, education and training elements.

§199.203 Alcohol testing procedures.

Each operator shall ensure that all alcohol testing conducted under this subpart complies with the procedures set forth in part 40 of this title. The provisions of 49 CFR part 40 that address alcohol testing are made applicable to operators by this subpart.

§199.205 Definitions.

As used in this subpart:

Accident means an incident reportable under part 191 of this chapter involving gas pipeline facilities or LNG facilities, or an accident reportable under part 195 of this chapter involving hazardous liquid or carbon dioxide pipeline facilities.

Administrator means the Administrator of the Research and Special Programs Administration (RSPA), or any person who has been delegated authority in the matter concerned.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this subpart.

Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Confirmation test means a second test, following a screening test with a result 0.02 or greater, that provides quantitative data of alcohol concentration.

Consortium means an entity, including a group or association of employers, recipients, or contractors, that provides alcohol testing as required by this subpart or other DOT alcohol testing rules and that acts on behalf of the operators.

Covered employee means a person who performs on a pipeline or at an LNG facility an operation, maintenance, or emergency-response function regulated by parts 192, 193, or 195 of this chapter. Covered employee and individual or individual to be tested have the same meaning for the purposes of this subpart. The term covered employee does not include clerical, truck driving, accounting, or other functions not subject to parts 192, 193, or 195. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.

Covered function (safety-sensitive function) means an operation, maintenance, or emergency-response function that is performed on a pipeline or LNG facility and the function is regulated by parts 192, 193, or 195.

DOT agency (or operating administration) of the United States Department of Transportation administering regulations requiring alcohol testing (14 CFR parts 61, 63, 65, 121, 135; 49 CFR parts 199, 219, 382, and 654 in accordance with part 40 of this title).

Employer or operator means a person who owns or operates a pipeline or LNG facility subject to parts 192, 193, or 195 of this chapter.

Performing (a covered function): An employee is considered to be performing a covered

function (safety-sensitive function) during any period in which he or she is actually performing, ready to perform, or immediately available to perform such covered functions.

Refuse to submit (to an alcohol test) means that a covered employee fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement to be tested in accordance with the provisions of this subpart, or engages in conduct that clearly obstructs the testing process.

Screening test means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.

State agency means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) or section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2009).

Substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

§199.207 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this subpart preempts any State or local law, rule, regulation, or order to the extent that:

- (1) Compliance with both the State or local requirement and this subpart is not possible;
- (2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this subpart; or
- (3) The State or local requirement is a pipeline safety standard applicable to interstate pipeline facilities.

(b) This subpart shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

§199.209 Other requirements imposed by operators.

Except as expressly provided in this subpart, nothing in this subpart shall be construed to affect the authority of operators, or the rights of employees, with respect to the use or possession of alcohol, including authority and rights with respect to alcohol testing and rehabilitation.

§199.211 Requirement for notice.

Before performing an alcohol test under this subpart, each operator shall notify a covered employee that the alcohol test is required by this subpart. No operator shall falsely represent that a test is administered under this subpart.

§199.213 Starting date for alcohol testing programs.

(a) Large operators. Each operator with more than fifty covered employees on February 15, 1994 shall implement the requirements of this subpart beginning on January 1, 1995.

(b) Small operators. Each operator with fifty or fewer covered employees on February 15, 1994 shall implement the requirements of this subpart beginning on January 1, 1996.

(c) All operators commencing operations after February 15, 1994 shall have an alcohol misuse program that conforms to this subpart by January 1, 1996, or by the date an operator begins operations, whichever is later.

§199.215 Alcohol concentration.

Each operator shall prohibit a covered employee from reporting for duty or remaining on duty requiring the performance of covered functions while having an alcohol concentration of 0.04 or greater. No operator having actual knowledge that a covered employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform covered functions.

§199.217 On-duty use.

Each operator shall prohibit a covered employee from using alcohol while performing covered functions. No operator having actual knowledge that a covered employee is using alcohol while performing covered functions shall permit the employee to perform or continue to perform covered functions.

§199.219 Pre-duty use.

Each operator shall prohibit a covered employee from using alcohol within four hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty. No operator having actual knowledge that a covered employee has used alcohol within four hours prior to performing covered functions or within the time period after the employee has been notified to report for duty shall permit that covered employee to perform or continue to perform covered functions.

§199.221 Use following an accident.

Each operator shall prohibit a covered employee who has actual knowledge of an accident in which his or her performance of covered functions has not been discounted by the operator as a contributing factor to the accident from using alcohol for eight hours following the accident, unless he or she has been given a postaccident test under §199.225(a), or the operator has determined that the employee's performance could not have contributed to the accident.

§199.223 Refusal to submit to a required alcohol test.

Each operator shall require a covered employee to submit to a postaccident alcohol test required under §199.225(a), a reasonable suspicion alcohol test required under §199.225(b), or a followup alcohol test required under §199.225(d). No operator shall permit an employee who refuses to submit to such a test to perform or continue to perform covered functions.

§199.225 Alcohol tests required.

Each operator shall conduct the following types of alcohol tests for the presence of alcohol:

(a) Post-accident. (1) As soon as practicable following an accident, each operator shall test each surviving covered employee for alcohol if that employee's performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident.

The decision not to administer a test under this section shall be based on the operator's determination, using the best available information at the time of the determination, that the covered employee's performance could not have contributed to the accident.

(2) If a test required by this section is not administered within 2 hours following the accident, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this paragraph is not administered within 8 hours following the accident, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(3) A covered employee who is subject to postaccident testing who fails to remain readily available for such testing, including notifying the operator or operator representative of his/her location if he/she leaves the scene of the accident prior to submission to such test, may be deemed by the operator to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(b) Reasonable suspicion testing. (1) Each operator shall require a covered employee to submit to an alcohol test when the operator has reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.

(2) The operator's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

(3) Alcohol testing is authorized by this section only if the observations required by paragraph (b)(2) of this section are made during, just preceding, or just after the period of the work day that the employee is required to be in compliance with this subpart. A covered employee may be directed by the operator to undergo reasonable suspicion testing for alcohol only while the employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing covered functions.

(4)(i) If a test required by this section is not administered within 2 hours following the determination under paragraph (b)(2) of this section, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the determination under paragraph (b)(2) of this section, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. Records shall be submitted to RSPA upon request of the Administrator.

(ii) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, an operator shall not permit a covered employee to report for duty or remain on duty requiring the performance of covered functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall an operator permit the covered employee to perform or continue to perform covered functions, until:

(A) An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or

(B) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following the determination under paragraph (2) of this section that there is reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.

(iii) Except as provided in paragraph (b)(4)(ii), no operator shall take any action under this subpart against a covered employee based solely on the employee's behavior and appearance in the

absence of an alcohol test. This does not prohibit an operator with the authority independent of this subpart from taking any action otherwise consistent with law.

(c) Return-to-duty testing. Each operator shall ensure that before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by §§ 199.215 through 199.223, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(d) Follow-up testing. (1) Following a determination under § 199.243(b) that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, each operator shall ensure that the employee is subject to unannounced followup alcohol testing as directed by a substance abuse professional in accordance with the provisions of § 199.243(c)(2)(ii).

(2) Follow-up testing shall be conducted when the covered employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing such functions.

(e) Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04. Each operator shall retest a covered employee to ensure compliance with the provisions of § 199.237, if an operator chooses to permit the employee to perform a covered function within 8 hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04.

§ 199.227 Retention of records.

(a) General requirement. Each operator shall maintain records of its alcohol misuse prevention program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) Period of retention. Each operator shall maintain the records in accordance with the following schedule:

(1) Five years. Records of employee alcohol test results with results indicating an alcohol concentration of 0.02 or greater, documentation of refusals to take required alcohol tests, calibration documentation, employee evaluation and referrals, and MIS annual report data shall be maintained for a minimum of five years.

(2) Two years. Records related to the collection process (except calibration of evidential breath testing devices), and training shall be maintained for a minimum of two years.

(3) One year. Records of all test results below 0.02 (as defined in 49 CFR part 40) shall be maintained for a minimum of one year.

(c) Types of records. The following specific records shall be maintained:

(i) Records related to the collection process:

(i) Collection log books, if used.

(ii) Calibration documentation for evidential breath testing devices.

(iii) Documentation of breath alcohol technician training.

(iv) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(v) Documents generated in connection with decisions on post accident tests.

(vi) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

(2) Records related to test results:

(i) The operator's copy of the alcohol test form, including the results of the test.

(ii) Documents related to the refusal of any covered employee to submit to an alcohol test required by this subpart.

of test.

(6) Number of covered employees with a confirmation test indicating an alcohol concentration of 0.04 or greater or who have violations of other alcohol misuse provisions who were returned to duty in covered positions (having complied with the recommendations of a substance abuse professional as described in §§199.235 and 199.243).

(7) Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater.

(8) Number of covered employees who were found to have violated other provisions of §§199.215 through 199.221, and any action taken in response to the violation.

(9) Number of covered employees who refused to submit to an alcohol test required under this subpart, and the action taken in response to the refusal.

(10) Number of supervisors who have received required training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(e) Each report with no screening alcohol test results of 0.02, or greater or violations of the alcohol misuse provisions of §§199.215 through 199.223 of this subpart shall be submitted on "RSPA Alcohol Testing MIS Data Collection EZ Form" and include the following informational elements. (This "EZ" report may only be submitted if the program results meet these criteria)

(1) Number of covered employees.

(2) Number of covered employees subject to testing under the alcohol misuse rule of another operating administration identified by each agency.

(3) Number of screening tests by type of test.

(4) Number of covered employees who refused to submit to an alcohol test required under this subpart, and the action taken in response to the refusal.

(5) Number of supervisors who have received required training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(f) A consortium may prepare reports on behalf of individual pipeline operators for purposes of compliance with this reporting requirement. However, the pipeline operator shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.

§199.231 Access to facilities and records.

(a) Except as required by law or expressly authorized or required in this subpart, no employer shall release covered employee information that is contained in records required to be maintained in §199.227.

(b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The operator shall promptly provide the records requested by the employee. Access to a employee's records shall not be contingent upon payment for records other than those specifically requested.

(c) Each operator shall permit access to all facilities utilized in complying with the requirements of this subpart to the Secretary of Transportation, any DOT agency, or a representative of a state agency with regulatory authority over the operator.

(d) Each operator shall make available copies of all results for employer alcohol testing conducted under this subpart and any other information pertaining to the operator's alcohol misuse prevention program, when requested by the Secretary of Transportation, any DOT agency with regulatory authority over the operator, or a representative of a state agency with regulatory authority

alcohol misuse requirements and the operator's policies and procedures with respect to meeting those requirements.

(1) The operator shall ensure that a copy of these materials is distributed to each covered employee prior to start of alcohol testing under this subpart, and to each person subsequently hired for or transferred to a covered position.

(2) Each operator shall provide written notice to representatives of employee organizations of the availability of this information.

(b) Required content. The materials to be made available to covered employees shall include detailed discussion of at least the following:

(1) The identity of the person designated by the operator to answer covered employee questions about the materials.

(2) The categories of employees who are subject to the provisions of this subpart.

(3) Sufficient information about the covered functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with this subpart.

(4) Specific information concerning covered employee conduct that is prohibited by this subpart.

(5) The circumstances under which a covered employee will be tested for alcohol under this subpart.

(6) The procedures that will be used to test for the presence of alcohol, protect the covered employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(7) The requirement that a covered employee submit to alcohol tests administered in accordance with this subpart.

(8) An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences.

(9) The consequences for covered employees found to have violated the prohibitions under this subpart, including the requirement that the employee be removed immediately from covered functions, and the procedures under §199.243.

(10) The consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04.

(11) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a coworker's), and including intervening evaluating and resolving problems associated with the misuse of alcohol including intervening when an alcohol problem is suspected, confrontation, referral to any available EAP, and/or referral to management.

(c) Optional provisions. The materials supplied to covered employees may also include information on additional operator policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol level, that are based on the operator's authority independent of this subpart. Any such additional policies or consequences shall be clearly described as being based on independent authority.

§199.241 Training for supervisors.

Each operator shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under §199.225(b) receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

§199.243 Referral, evaluation, and treatment.

(a) Each covered employee who has engaged in conduct prohibited by §§199.215 through 199.223 of this subpart shall be advised of the resources available to the covered employee in evaluating and resolving problems associated with the misuse of alcohol, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(b) Each covered employee who engages in conduct prohibited under §§199.215 through 199.223 shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse.

(c)(1) Before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by §§199.215 through 199.223 of this subpart, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(2) In addition, each covered employee identified as needing assistance in resolving problems associated with alcohol misuse

(i) Shall be evaluated by a substance abuse professional to determine that the employee has properly followed any rehabilitation program prescribed under paragraph (b) of this section, and

(ii) Shall be subject to un-announced followup alcohol tests administered by the operator following the employee's return to duty. The number and frequency of such followup testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the employee's return to duty. In addition, follow-up testing may include testing for drugs, as directed by the substance abuse professional, to be performed in accordance with 49 CFR part 40. Followup testing shall not exceed 60 months from the date of the employee's return to duty. The substance abuse professional may terminate the requirement for followup testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

(d) Evaluation and rehabilitation may be provided by the operator, by a substance abuse professional under contract with the operator, or by a substance abuse professional not affiliated with the operator. The choice of substance abuse professional and assignment of costs shall be made in accordance with the operator/employee agreements and operator/employee policies.

(e) The operator shall ensure that a substance abuse professional who determines that a covered employee requires assistance in resolving problems with alcohol misuse does not refer the employee to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring an employee for assistance provided through--

(1) A public agency, such as a State, county, or municipality;

(2) The operator or a person under contract to provide treatment for alcohol problems on behalf of the operator;

(3) The sole source of therapeutically appropriate treatment under the employee's health insurance program; or

(4) The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

§199.245 Contractor employees.

(a) With respect to those covered employees who are contractors or employed by a contractor, an operator may provide by contract that the alcohol testing, training and education required by this

subpart be carried out by the contractor provided:

(b) The operator remains responsible for ensuring that the requirements of this subpart and part 40 of this title are complied with; and

(c) The contractor allows access to property and records by the operator, the Administrator, any DOT agency with regulatory authority over the operator or covered employee, and, if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purposes of monitoring the operator's compliance with the requirements of this subpart and Part 40 of this title.

Issued in Washington, DC on January 25, 1994.

Federico Pea,
Secretary of Transportation.

Ana Sol Gutierrez,
Acting Administrator, Research and Special Programs Administration.

Note: The following appendix and exhibit will not appear in the Code of Federal Regulations.

proposed rules on the use of alcohol screening devices and the use of blood alcohol tests in post-accident and reasonable suspicion situations when an evidential breath testing device (EBT) is not reasonably available.

The Petitioners request that RSPA stay implementation of the alcohol misuse rule until such time as DOT issues final regulations concerning screening devices and blood tests. The Petitioners contend that delaying implementation of the final rule does not present a safety issue because the type of alcohol testing required by the rule (e.g., post-accident, reasonable suspicion) is already performed by most natural gas utilities and pipeline operators.

The Petitioners note that the proposal on alternate screening devices would allow employers to use them to determine the presence of alcohol and then perform confirmation tests using approved EBTs. With regard to the proposed rule on blood testing, the Petitioners note that the rule would allow blood tests in post-accident and reasonable suspicion situations where operators may not have reasonable access to an EBT. The Petitioners are concerned that, to comply with the current final rule, operators will have to purchase EBTs and train operators, or enter into contractual agreements for testing with EBTs, only to learn that DOT has now issued a rule authorizing blood testing. The Petitioners are concerned that pipeline operators will unnecessarily spend thousands of dollars to comply with a rule that may soon be revised. In addition, Petitioners request that, since pipeline operators are not required to conduct pre-employment or random alcohol testing, RSPA should allow blood testing as an unqualified alternative to EBTs. The Petitioners state that in the pipeline industry, where many employees are located at remote sites, there will be numerous situations where operators will not be able to transport quickly an employee to a testing facility or have a breath alcohol technician and equipment readily available. Moreover, the Petitioners contend that mandating the use of EBTs will significantly add to the costs of carrying out alcohol prevention programs, in terms of procuring new equipment, developing training manuals, and instructing employees on their use, even though there exists a real possibility that operators will be unable to use the devices in the majority of testing situations.

The Petitioners note that the Omnibus Transportation Employee Testing Act of 1991 did not apply to the pipeline industry, and therefore RSPA is not constrained by the Act in promulgating alcohol regulations. The Petitioners also note that DOT's regulations attempt to protect employees from the invasiveness of blood testing, by requiring the use of EBTs. Petitioners contend, however, that the need for protection is most necessary in a random test, where the employee has done nothing to warrant being singled out for testing. In contrast, Petitioners state that, in the case of a post-accident or reasonable suspicion test, employee protection is counterbalanced by the need to establish if alcohol use is a threat to safety or has played a role in an accident. (Jt. Pet. at 8).

RSPA Response. RSPA is denying the Petitioners' request. DOT's alcohol testing regulations are based on the concept that evidential breath testing is the preferred method of testing for the presence of alcohol. The reasons underlying the decision to select breath testing were discussed at some length in the Common Preamble (59 FR 7315). Evidential breath testing devices are reliable and highly accurate at detecting even low alcohol concentrations, and their use is possible in all transportation settings because they are portable. The devices have been in use a long time, and all States accept EBT results as reliable evidence of an individual's violation of a law establishing a per se prohibited blood alcohol concentration, as long as the devices are properly calibrated and operated by trained personnel. As important, EBTs provide an immediate confirmed result, which enables the immediate removal of an employee who has misused alcohol.

In contrast, blood alcohol testing is invasive, does not provide an immediate result, and requires extensive sample collection, shipping, and laboratory analysis procedures to implement. The NPRM on blood testing proposed to allow blood testing only in a limited set of circumstances where an EBT is not readily available. As stated in the preamble to the NPRM,

drivers of commercial motor vehicles (CMVs) who are required to obtain commercial driver's licenses (CDLs), be subject to testing for the illegal use of alcohol and controlled substances.

Therefore, a pipeline employee who is required by his or her employer (a pipeline operator) to hold a CDL as a condition of employment, and who is required to be available to drive a CMV as part of his or her job, is subject to the FHWA rules, including random testing. This requirement applies regardless of the amount of time that the employee actually drives a CMV or performs other safety-sensitive duties as defined in the FHWA regulations under 49 CFR part 382 (e.g., loading/unloading vehicles, waiting to be dispatched, performing vehicle inspections). The timing of any random test, however, does depend upon when the employee is performing that driving function. The employee may be subject to random alcohol testing under the FHWA rules at any time just before, during, or just after driving a CMV. If a pipeline employee may be called upon to drive a CMV at any time during the work week, then the employee is subject to random testing at any time during the employee's scheduled work shift. If, however, the employee is called upon to drive a CMV only two days a week (e.g., Monday and Friday), then the employee is only subject to random testing on those two days.

In addition, 49 U.S.C. 31306 requires that a driver required to obtain a CDL must be subject to pre-employment/pre-duty testing. Therefore, a pipeline employee who is required to obtain a CDL as a condition of employment, and who is required to be available to drive a CMV, is subject to pre-employment/pre-duty testing under the FHWA rules. Requirements for pre-employment/pre-duty testing under the FHWA rule are contained in 49 CFR 382.301.

With respect to post-accident and reasonable suspicion testing, an employee is subject to testing while performing either pipeline or driving functions. If an employee is involved in accident while driving a CMV, then the operator should look to the FHWA rules (49 CFR 390.5) to determine whether the accident is one that requires testing. Similarly, if an employee is involved in an accident while performing a covered pipeline function, the definition of an accident in section 199.205 applies.

Conversely, a pipeline employee who is not required by his or her employer (a pipeline operator) to hold a CDL as a condition of employment and does not drive a CMV as part of his or her job, is not subject to testing under the FHWA rules.

3. RSPA Should Clarify That Operators Are Only Responsible for Preventing Employees From Driving Company Vehicles

The Petitioners state that the Background Material accompanying the 49 CFR part 40 final regulations states that employees testing positive for alcohol should not drive." (59 FR 7340, 7346). Petitioners contend that enforcing a broad prohibition on driving raises serious legal questions. The Petitioners request that DOT clarify that the employer's responsibility extends only to limiting employees from driving company vehicles or for company purposes, and that employers should not be responsible for policing the actions of an employee after he or she has tested positive.

RSPA Response. RSPA is granting the Petitioners' request to clarify this issue. The preamble to the 49 CFR part 40 regulations states that the DOT alcohol testing form includes a statement, to be signed by the employee, that persons who test positive should not drive or perform other safety-sensitive functions. (59 FR 7346). The requirement to sign the statement applies to the employee, not to the employer. The statement in the preamble that employers have a responsibility, as part of their alcohol education for employees, to emphasize that employees must cease performing safety-sensitive functions if they test positive does not mean that employers must police the private conduct of employees who test positive.

The employer's specific re-sponsibility is set forth in 49 CFR 199.215 and 199.237, which

provide that an operator may not permit a covered employee who has an alcohol concentration of 0.02 or greater to perform or continue to perform covered functions until certain requirements are met. An operator may not permit such an employee, for example, to drive a CMV or perform a pipeline safety function. The rules do not require an operator to prohibit an employee from driving his or her own vehicle after having tested positive. However, under 49 CFR 199.239, an operator has an obligation to promulgate a policy on the misuse of alcohol, including providing educational materials to employees concerning the effects of alcohol misuse on an individual's health, work, and personal life. Such materials frequently include information advising on the dangers of driving while under the influence of alcohol. Therefore, no change to the rule is necessary.

4. RSPA Should Clarify That Operators Are Not Responsible for the Storage of EBT Devices

The Petitioners state that the DOT regulations in 49 CFR 40.55(c) require that employers store EBTs in a secure space. The Petitioners contend that it will often be the case that EBTs will not be in the control of the employer, but will be maintained by hospitals, contractors, and consortiums. Where testing devices are in the possession of others, the Petitioners contend, employers will have limited ability to control maintenance and operation of the devices. The Petitioners maintain that all that reasonably can be required of employers is that they contractually require third parties to abide by the regulations. The Petitioners contend that, as for emergency personnel and hospitals, employers obviously cannot be required to monitor their operations.

RSPA Response. Section 40.55(c) stipulates that when the employer is not using the EBT at an alcohol testing site, the employer shall store the EBT in a secure space. This provision plainly is directed to those situations when the employer is conducting the testing, either directly or through a contract with a third party provider. If the employer is conducting the testing, then the employer must secure the EBT when it is not in use. If the employer is conducting testing through a contractor, then the contract must provide that the contractor will secure the EBT when it is not in use. Therefore, no change to the rule is necessary.

5. RSPA Should Clarify That Operators May Combine Drug and Alcohol Training Requirements

The Petitioners state that the Common Preamble indicates that employers may combine their alcohol and drug training programs for supervisors for a total time of two hours. The Petitioners contend that much of the information pertaining to detecting alcohol and drug abuse will overlap, and it is not necessary to require a two-hour training session. The Petitioners urge DOT to clarify that employers need only provide combined training on drugs and alcohol for one hour.

RSPA Response. RSPA is denying the Petitioners' request. The Common Preamble clearly provides that "[e]mployers are free to combine supervisor training for alcohol misuse detection with the comparable training for drug use detection currently required by the OA drug testing rules for a total of two hours to minimize costs and inconvenience." (59 FR 7334). The Petitioners did not provide any justification for reducing the supervisory training to a total of one hour for both drugs and alcohol, other than to suggest that "much of the information * * * will overlap." (Jt. Pet. at 11). Although some of the symptoms of drug and alcohol use may be similar, the symptoms vary widely depending on the type and quantity of the substance ingested. Many commenters recommended that additional supervisory training on alcohol misuse (more than one hour) be required, and many employers voluntarily offer recurrent or follow-up training to ensure that supervisors have sufficient awareness of the indicators of alcohol and drug use. Therefore, RSPA is retaining the requirement that operators must provide a minimum of one hour of supervisory training for drug use and one hour for alcohol misuse, which may be combined into a single two-hour training period. Accordingly, no change to the rule is necessary.

6. RSPA Should Clarify Its Position on Follow-Up Tests for Alcohol and Drugs

The Petitioners state that the RSPA regulations in 49 CFR 199.225(d)(1) require follow-up alcohol tests in certain situations, but do not address whether it is appropriate for a substance abuse professional (SAP) also to require follow-up drug tests, when an individual also shows signs of drug abuse. The Petitioners point out that the Common Preamble, however, indicates that the rules will permit an employer to conduct follow-up drug tests, if the SAP suspects drug involvement. The Petitioners request that RSPA clarify that the authority in the Common Preamble also extends to RSPA operators.

RSPA Response. RSPA is granting the Petitioners' request to clarify this issue. Section 199.225(d)(1) provides that follow-up testing shall be conducted in accordance with the provisions of §199.243(b)(2)(ii). This reference is in error, and should be to §199.243(c)(2)(ii), which provides that follow-up testing may include testing for drugs, as directed by the SAP, to be performed in accordance with 49 CFR part 40. RSPA is amending §199.225(d)(1) to include the correct reference.

7. RSPA Should Clarify That Companies Are Not Responsible for Ensuring Contractor Compliance With the Final Rule

The Petitioners contend that operators should not be responsible for ensuring that contractors comply with the alcohol misuse program. (Jt. Pet. at 11). The Petitioners contend that the monitoring responsibility for contractor employees is highly impracticable and difficult to achieve, particularly for small operators who rely on many contractors, and may enter into contracts at short notice. The Petitioners assert that there are practical problems in monitoring transient workers, or in knowing which particular contract employees will perform certain jobs. The Petitioners state that contractors "are used predominantly for construction, and almost never for operations. Therefore, it is difficult to envision circumstances where post-accident testing would be required for contractors." (Jt. Pet. at 12). The Petitioners assert that "for cause" testing is also unnecessary, because currently when an operator suspects a contractor employee is alcohol-impaired, the contractor is ordered to remove the employee. The Petitioners therefore contend that requiring operators to oversee or manage a detailed alcohol compliance program for contractors is an inefficient use of resources and an unnecessary burden, given that the only testing that is likely to be carried out is "for cause" testing, which is already handled adequately by operator/contractor agreements.

RSPA Response. RSPA is denying the Petitioners' request. RSPA's longstanding and oft-stated position on this issue is that a pipeline operator who chooses to perform safety-sensitive functions by using contractors is held responsible for compliance with the Pipeline Safety Regulations just as if the operator's own employees were performing the work (54 FR 51747, December 18, 1989; 57 FR 59714, December 15, 1992). The proper performance of a safety-sensitive function should not be dependent on the individual's direct or indirect employment relationship with the operator. Furthermore, the alcohol rules are limited to persons performing covered functions, i.e., operation, maintenance, and emergency response functions that are regulated by 49 CFR parts 192, 193, or 195 and performed on a pipeline or liquefied natural gas facility. Covered functions do not include clerical, truck driving, accounting, or other functions not covered by parts 192, 193, or 195 (49 CFR 199.205).

The Petitioners themselves note that contractors are used predominantly for construction (which generally is not a covered function), are almost never used for operations, and, therefore, post-accident testing for contractors would be rare. By this same reasoning, contractors would only rarely be subject to reasonable suspicion testing, i.e., when performing covered functions. If the Petitioners are correct that few contractor employees will be performing covered functions, then there should be a very minimal burden on operators. If a contractor does not perform covered functions, then no operator

from covered functions for eight hours or until a test result of below 0.02), no operator shall take any action under [the RSPA alcohol misuse rule] against an employee based solely on the employee's behavior and appearance, in the absence of an alcohol test. This does not prohibit an operator with the authority independent of this [rule] from taking any action otherwise consistent with law. Under the RSPA rule, an operator is required to test an employee when the operator has reason to believe the employee is under the influence of or impaired by alcohol, or has violated any other prohibition in the RSPA rule. The operator may not simply remove the employee without conducting a test, unless conducting a test is physically impossible because the employee is in a remote location or the only available EBT is broken. In such a situation, where a test cannot be conducted, the operator must ensure that the employee does not perform any covered functions for eight hours or until a test result of below 0.02 is obtained, whichever comes first. The operator may take no other action against the employee under authority of the RSPA rule. If the operator wishes to take additional action under its own authority, it may do so, but it must conduct reasonable suspicion testing in accordance with the RSPA rule.

As explained in the preamble to the RSPA final rule (59 FR 7427), RSPA will monitor the data that we receive from post-accident and reasonable suspicion tests to determine if further action is warranted. Alcohol misuse is a problem in society generally, and it is reasonable to expect that the pipeline industry is not immune from that problem. Testing is vital to determine the extent of any problem, and the resulting data is necessary to evaluate the alcohol misuse program and develop more effective strategies for eliminating alcohol misuse. Accordingly, no change to the rule is necessary.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Although the February 15, 1994 alcohol misuse final rule was significant, this document is not significant because it merely clarifies the February 15 rule and makes no substantive changes to the rule text. Therefore, this document was not reviewed by the Office of Management and Budget under section 3(f) of Executive Order 12866, and is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation prepared for the February 15, 1994 final rule is available for review in the docket.

Paperwork Reduction Act

This document does not contain any new information collection requirements subject to the Paperwork Reduction Act.

Regulatory Flexibility Act

This document merely clarifies the final rule published on February 15, 1994. Therefore, I certify under Section 605 of the Regulatory Flexibility Act (5 U.S.C.) that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612

This action will not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of Government. Therefore, RSPA has determined that this action does not have sufficient

federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 199

Alcohol testing, Drug testing, Pipeline safety, Recordkeeping and reporting.
In consideration of the foregoing, RSPA is amending 49 CFR part 199 as follows:

PART 199 DRUG AND ALCOHOL TESTING

1. The authority citation for part 199 is revised to read as follows:

Authority: 49 U.S.C. 60101 et seq.; 49 CFR 1.53.

2. Section 199.225 is amended by revising paragraph (d)(1) to read as follows:

§199.225 Alcohol tests required.

* * * * *

(d) Follow-up testing. (1) Following a determination under §199.243(b) that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, each operator shall ensure that the employee is subject to unannounced follow-up alcohol testing as directed by a substance abuse professional in accordance with the provisions of §199.243(c)(2)(ii).

* * * * *

Issued in Washington, DC on November 22, 1994.

D.K. Sharma,
Administrator, Research and Special Programs Administration.
[FR Doc. 94-29391 Filed 11-29-94; 12:03 pm]

Amdt. 199-11; Docket No. 48498

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

Coast Guard

46 CFR Part 16

Research and Special Programs Administration

49 CFR Part 199

Federal Railroad Administration

49 CFR Part 219

Federal Highway Administration

49 CFR Part 382

Federal Transit Administration

49 CFR Part 653

[OST Docket No. 48498]

RIN 2105-AB94

Random Drug Testing Program

AGENCIES: Office of the Secretary, Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Federal Transit Administration, Research and Special Programs Administration, and the United States Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: In response to public comments, petitions submitted by industry, and on their own initiative, the Federal Aviation Administration (FAA), the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), the Federal Transit Administration (FTA), the Research and Special Programs Administration (RSPA), and the United States Coast Guard (USCG) (the operating administrations or OAs) have revised their random drug testing rules. As revised, the rules provide that the OA may lower the minimum random drug testing rate to 25 percent if the industry-wide (e.g., aviation, rail) random positive rate is less than 1.0 percent for 2 calendar years while testing at 50

percent. The rate will return to 50 percent if the industry random positive rate is 1.0 percent or higher in any subsequent calendar year. The industry-wide random positive rate for each transportation industry will be calculated from data submitted to the OAs and announced yearly by the respective Administrator or the Commandant of the Coast Guard. Based on this revision, the random drug testing rate for the railroad and aviation industries is reduced by the FRA and FAA Administrators, respectively, to 25 percent, effective January 1, 1995.

DATES: This rule is effective January 1, 1995.

FOR FURTHER INFORMATION CONTACT: For general questions, the Office of Drug Enforcement and Program Compliance, (202) 366-3784; For questions regarding a specific operating administration, please call the following people; FTAJude Meade (202) 366-2896, FRALamar Allen (202) 366-0127, FHWA David Miller (202) 366-2981, RSPACatrina Pavlik (202) 366-6223, FAABill McAndrew (202) 366-6710, USCGLCDR Mark Grossetti (202) 267-1421.

SUPPLEMENTARY INFORMATION:

Current Drug Testing Requirements

In 1988, the Department of Transportation issued six final rules mandating anti drug programs for certain transportation workers in the aviation, interstate motor carrier, pipeline, maritime and transit industries, and expanded the requirements of the existing FRA rule. The rules included requirements for education, training, testing and sanctions. The testing component of each program included pre-employment, post-accident, reasonable suspicion (reasonable cause), periodic (for those subject to periodic medical examinations), random, and return to duty drug testing for approximately four million workers in safety-sensitive positions. After a phase-in of one year, the random testing provisions of the rule required a minimum testing rate of at least 50 percent per year. Implementation of the testing requirements was delayed in FTA and FHWA due to litigation. Employers regulated by FHWA began random testing of interstate drivers in 1991 and 1992, and will begin random testing of intrastate drivers in 1995 and 1996. FTA will begin random testing of large transit operators in 1995 and small transit operators in 1996.

Current Alcohol Testing Requirements

On February 15, 1994 (59 FR 7302), the FAA, FHWA, FRA, FTA and RSPA published final rules limiting alcohol use by transportation workers. Four of the OA rules (FAA, FHWA, FRA and FTA) were required by the Omnibus Transportation Employee Testing Act of 1991. RSPA adopted similar, but more limited requirements, based on its own statutory authority.

The FAA, FHWA, FRA and FTA rules require random testing of safety-sensitive employees in those industries. The rules provide for an initial minimum random alcohol testing rate of 25 percent. The industries (e.g., aviation, motor carrier, rail or transit) random alcohol rate may be adjusted based on a performance standard related to its random alcohol violation rate. Because of safety concerns, two years of data are necessary to justify lowering the random alcohol testing rate; one year of data is sufficient to raise it. The OA (in conjunction with the OST Office of Drug Enforcement and Program Compliance) will review the data and announce in the **Federal Register** the minimum annual random alcohol testing rate applicable in the calendar year following publication. If the industry violation rate is

if it aint broke, dont fix it attitude.

A few commenters argued that the rate should be increased. These commenters stated that a greater perception of getting caught would result in less drug use. One noted that at a 50 percent testing rate, some employees are never tested while others are tested two or more times per year.

In terms of a triggering group, most favored an industry-wide approach. There was some support for setting the rate by job categories tempered by the concern that such differentiation not be arbitrary. A few commenters suggested that employers should have flexibility to set the rate at whatever level they thought best, based on their own past experience.

Technical Meeting

The Department held a public meeting on technical issues related to workplace random testing in Washington, DC, on February 1 and 2, 1993. The meeting, which included presentations by experts from federal agencies, the military, academia, and private industry, was attended by over 200 people. Transcripts of the meeting are included in the docket.

The NPRM

The Department published a notice of proposed rulemaking (NPRM) on February 15, 1994, (59 FR 7614). The NPRM proposed that the random testing rate could be lowered to 25 percent by an operating administration if the industry-wide random positive rate were less than 1.0 percent for 2 consecutive calendar years while testing at 50 percent. The rate would increase back to 50 percent if the industry random positive rate were 1.0 percent or higher for any entire subsequent calendar year. Under the proposal, it was possible that different industries would be subject to different rates in a given calendar year. The NPRM asked for comment on a variety of ways to fine tune this basic approach.

The NPRM also proposed that each year each Administrator (or Commandant of the Coast Guard) would publish in the **Federal Register** the minimum required percentage for random testing of covered employees during the calendar year following publication. Any random testing rate change indicated by industry performance would then occur at the beginning of that calendar year.

In the NPRM, the Administrator's decision to authorize a decrease (or to require a return to the 50 percent rate) would be based on the overall positive rate in the industry. The primary source of data would be the Management Information System (MIS) reports from covered employers submitted to the individual operating administrations. For the aviation and rail industries, for years prior to the MIS reports, we proposed initially to rely on the data submitted under reporting requirements that have been in place since FAAs and FRAs random drug testing rules were originally issued.

The NPRM proposed that, if a given covered employee were subject to random drug testing under the drug testing rules of more than one DOT agency, the employee would be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's safety-sensitive functions. Similarly, the NPRM provided that, if an employer were required to conduct random drug testing under the drug testing rules of more than one DOT agency, the employer could either establish separate pools for random selection, with each pool containing covered employees subject to testing at the same required rate, or establish one pool for testing all covered employees at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

The proposal included several provisions to provide employers greater flexibility or to provide greater clarity. In addition, RSPA and USCG proposed minor amendments to conform their rule to the Departmental system and eliminate unnecessary provisions.

significant difference in the positive rate based on 50 percent or 25 percent testing. It was not clear, however, why the respondents were testing at different rates.

Eighteen commenters addressed the issue of what is the appropriate grouping for triggering a potential reduction in the testing rate. Thirteen commenters (including the American Trucking Associations, the American Movers Conference, the American Public Transit Association, the National Air Transportation Association, the Regulated Common Carrier Conference, all the pipeline submissions, and a number of smaller aviation and motor carrier interests) suggested the rates be determined for each company or operator. The Air Line Pilots Association and the Allied Pilots Association suggested that the rates be determined by job category. Several comments favored a breakdown by industry segment (e.g., intercity buses, aviation contractors, offshore mobile drilling units) or by state.

Most of the commenters were anxious to institute a reduction in the testing rate as soon as possible and to ensure that the testing rate would not be raised without good cause. A number of commenters were concerned by the relatively long time before there was any possibility of reducing the random testing rates in most of the industries. These commenters, therefore, wanted the Department to expedite or fast track the potential reduction in testing rates. Many marine and motor carrier commenters, for example, asked that DOT either randomly collect or specifically require reports of past years data that employers are required to maintain. These commenters suggested that DOT should consider this retroactively-collected data to determine whether a reduction is warranted.

There were a number of comments on the appropriate number of years for lowering or raising the random testing rate. For example, several commenters strongly argued that DOT should allow the testing rate to be reduced based on one year of data. The Air Transport Association stated that an increase in the testing rate should be based on either 3 years of data that demonstrate a clear upward trend or a significant increase in any 1 year.

Several commenters were concerned that recent changes in the U.S. Department of Health and Human Services Mandatory Guide-lines for Federal Workplace Drug-Testing Programs, as incorporated in 40 CFR Part 40, will result in more frequent identification of the presence of THC (the active ingredient in marijuana) on screening tests, thus leading to an increase in the number of positive tests. These commenters argued that the Department should make a special accommodation in the rules to account for this expected increase.

Available Data

In addition to the public comments to the rulemaking, the Department considered the following drug testing data in the regulated industries, the Departments Civilian workforce, and the U.S. Coast Guard military personnel. The data do not include refusals to be tested. The operating administration data reflect phase-in of random testing from 25 percent to 50 percent unless otherwise noted.

Aviation

RANDOM TESTING

	1990*	1991*	1992*	1993
Total Number of Random Tests	84,585	170,186	183,176	182,482
Number of Positives	445	1,258	1,307	960
Percent Positive	0.53	0.74	0.71	0.53

(*These numbers are slightly different from the NPRM due to further examination and correction of some reported data.)

POST-ACCIDENT DRUG POSITIVE RATES

1990	1991	1992	1993
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Total Post Accident Tests	248	481	459	343
Number of Positives	2	2	0	0
Percent Positive	0.8	0.4	0	0

REASONABLE CAUSE DRUG POSITIVE RATES

	1990	1991	1992	1993
Total Reasonable Cause Tests	1,127	1,178	861	377
Number of Positives	48	46	37	29
Percent Positive	4.2	3.9	4.2	7.6

Railroads

RANDOM TESTING

	1990	1991	1992	1993
Total Number of Random Tests	35,228	50,436	42,599	42,199
Number of Positives	365	447	336	303
Percent Positive	1.04	0.88	0.79	0.7

POST-ACCIDENT DRUG POSITIVE RATES

1987	1988	1989	1990	1991	1992	1993
5.1%	5.6%	3.0%	3.0%	1.1%	1.8%	2.0%

REASONABLE CAUSE DRUG POSITIVE RATES

(Includes tests after violations of operating rules and personal injuries)

1987	1988	1989	1990	1991	1992	1993
5.4%	4.7%	3.6%	1.8%	1.9%	1.9%	1.9%

In July 1991, the FRA initiated a comparative study of different random testing rates and the impact on deterrence, as measured by the positive rate. The study compared four railroads testing at 50 percent (control group) with four railroads testing at 25 percent (experimental group). The positive rate for the control group when the study was initiated was 1.1 percent; for the experimental group it was 0.89 percent. In the first year (July 1991 through June 1992), the control group positive rate was 0.90 percent, the experimental groups was 0.87 percent. For the period July 1992 through June 1993, these groups had positive rates of 0.80 percent and 0.94 percent, respectively. During the third year, the experimental rate was 0.86 percent and the control rate was 0.77 percent. The three-year totals were 0.89 percent for the experimentals and 0.82 for the controls.

Motor Carriers

The Omnibus Transportation Employee Testing Act of 1991 (P.L. 102-143, Title V, Section 5) required FHWA to conduct a demonstration project to study the feasibility of random roadside alcohol and controlled substances testing. It was partly designed to serve as a test of, and establish a record on, the effectiveness of state-administered testing in detecting individuals, such as independent owner-operators and independent drivers, who might otherwise avoid detection through the carrier-administered testing directed by the [Omnibus Act]. S. Rep. 102-54, p. 34. The pilot program was administered under the Motor Carrier Safety Assistance Program (MCSAP), which is a federal

grant program that assists states in enforcing motor vehicle safety laws and regulations. The pilot program sampled drivers holding commercial drivers licenses operating only on interstate highways and major state roads.

The states of New Jersey, Minnesota, Nebraska, and Utah were selected to participate in the program because they are representative of various geographic and population characteristics. During the course of the year-long study in each state, over 30,000 random drug tests were conducted. Minnesota and New Jersey combined probable cause testing with requests for voluntary urine samples. In some states, drivers could refuse to submit to the drug tests without sanction. The percent positive may also be understated because drivers could have avoided the testing site if they were aware of the testing through communications on CB radios or other informal information networks. The results were as follows:

RANDOM DRUG TESTING RESULTS IN FOUR PILOT PROGRAM STATES

Drug Testing	NE	UT	MN	NJ	Total
Specimens Evaluated	7,496	10,131	5,729	7,556	30,912
	32	55	359	859	1,305
Refusals	0.43%	0.54%	5.9%	10.2%	4.1%
	271	410	269	460	1,410
Percent Refused	3.6%	4.0%	4.7%	6.1%	4.6%
Positive Specimens					
Percent Positive					

The study notes that positive rates for employer-based random drug testing programs that were inspected as a part of normal safety reviews were 2.5 percent for fiscal year 1992, and 3.11 percent for the first six months of fiscal year 1993.

FHWA conducted a one-time special field study of compliance reports. In general compliance investigations of 4,967 interstate motor carrier drug testing programs in the first six months of FY 1993, 28,250 random tests were conducted. There were 878 verified positive results (3.11 percent). The audits represent less than 2 percent of the motor carriers subject to the FHWA rule. The FHWA selects interstate motor carriers for general safety rule compliance investigations by factors such as a safety rating or prior compliance problem. These compliance investigations do not offer scientific, statistically unbiased sampling methods.

U.S. DOT Employees

In the Departments federal employee testing program, the random testing rate of at least 50 percent was phased-in from 25 percent to 50 percent over the first year of the program and achieved at the end of FY 1988. A testing rate of at least 50 percent was maintained in FY 1989-1991. In FY 1992, the figures include testing over the first five months with a rate of at least 50 percent, followed by seven months of testing with a rate of at least 25 percent. FY 1993 figures reflect a full year of testing at 25 percent. The following table summarizes DOT federal employee random testing data.

	FY88	FY89	FY90	FY91	FY92	FY93
Total Number of Random	5,047	17,926	19,103	18,671	12,454	9,433

We acknowledge that breaking up industries into subgroups may be desirable from the point of view of subgroups with lower positive rates. Nevertheless, after careful consideration, we have chosen not to take this approach for several reasons. It allows us to focus on broad safety issues and keep the focus away from potentially endless splitting and balkanization within the industries. If the Department, for example, divided an industry into large and small operators, a particular large operator with very low positives may ask to be separated or certain categories of employees within one of the groups may ask then to be distinguished.

Breaking industries into different subgroups would have many undesirable consequences. As a practical matter, it would be extremely difficult and costly for DOT to administer and enforce. There would be less pressure on very poorly performing subgroups to improve, especially when the existing industry-wide rate was close to 1.0 percent. There might be greater incentive to cheat, especially if the rates were determined by company or small subgroups. Significantly more employees would fall into more than one category, which would cause unnecessary confusion in ensuring random selection and recordkeeping. It would be much harder for consortia to keep track of and ensure the integrity of the data. Finally it might lead to grouping by demographics.

The Testing Rates

The final rule maintains the initial 50 percent random drug testing rate. We believe that this is the appropriate testing rate for industries that are beginning their testing programs. In order to provide incentive for lowering drug usage in a given industry, the Department will allow the random testing rate to be lowered to 25 percent based on demonstrably low annual positive testing rates. The decision will primarily be based on data submitted to the Department.

Under existing MIS rules, certain employers must submit data for a given calendar year by the following March 15th. The Office of Drug Enforcement and Program Compliance in the Office of the Secretary (OST) and each operating administration will review each industry's data for accuracy and completeness and issue a determination regarding the random test rate within a few months. Because covered entities need some lead time to adjust their procedures, make changes in any contracts, and take other necessary action to adjust to an increase or decrease, the notice will be published in advance of the next calendar year.

We recognize that because the reported positive rate is obtained from data the precision of which is eroded by sampling variance and measurement error, and whose accuracy is diminished by non-response bias, there is a risk that it diverges from the actual positive rate in the population. Each operating administration will be using MIS data collection and sampling methods that address these issues to the extent possible and make sense in the context of its particular industry. Where not all employers are included in the reported data, the operating administration will decide how many covered employers must be required to report or be sampled; this decision will be based on the number of employers (not otherwise required to report) that must be sampled to ensure that the reported data from the sampled employers reliably reflect the data that would have been received if all were required to report. However, the decision on whether the reported data reliably support the conclusion (e.g., an audit of company records shows significant falsification of reports) remains subject to DOT's discretion. If the reported data are not sufficiently reliable, the operating administration will not permit the random rate adjustment to occur.

Each operating administration will publish a notice in the **Federal Register** stating what the random testing rate will be in the following year. Any random rate adjustment will occur at the beginning of the calendar year in order to maintain the integrity of the MIS data. The Department may also use a variety of other tools such as press releases, special mailings, or briefings for key industry and press representatives to disseminate information regarding any rate adjustments.

As proposed in the NPRM, the random testing rate may be reduced to 25 percent if the industry-wide random positive rate is less than 1.0 percent for 2 consecutive calendar years while testing at 50 percent. Such a performance-based approach rewards good results while maintaining an acceptable level of deterrence, as well as detection. Based on the comments filed and the experiences of the DOT internal program, we believe that reducing the random testing rate to 25 percent could save up to 40 percent of the annual random testing costs incurred at the full 50 percent rate. A two-tier system makes the drug testing rule more consistent with the alcohol testing rule while acknowledging the difficulty of identifying drug use.

We believe that 1.0 percent is the appropriate level at which to permit a reduction or require an increase for the reasons stated in the NPRM. This level is based on the experience that the military and other workplace programs have had with deterrence-based drug testing. Their results reveal that no matter what rate is used for random testing, the testing programs never achieve zero positives. There always is a constant group of hard-core individuals of less than 1.0 percent of the population who are detected positive over a period of time; these individuals are unaffected by deterrence-based testing because of addiction or belief that they can escape detection. Several commenters asked us to raise the level, primarily to make it easier for their industry to qualify for a reduction in the testing rate. We were un-persuaded, however, by these commenters because we believe it is not appropriate to raise the level to ease compliance, would unduly undermine the important safety objectives of the program, and is an appropriate cut-off in light of what we believe are achievable goals.

As mentioned above, many commenters, particularly in the aviation industry, strongly supported a 10 percent testing rate. They noted that the alcohol testing rules provide a three-tier system (50 percent / 25 percent / 10 percent), and believe that if performance were adequate, an industry, or industry subgroup, should be permitted to test at a 10 percent rate. To the extent that costs are reduced with the number of tests conducted, a 10 percent testing rate would provide important cost savings to the best employers with the smallest drug use problem. On a more intangible level, it would provide a goal for employers. It also would be the most flexible approach.

In the NPRM, we noted our tentative conclusion that a 25 percent random testing rate is the minimum effective rate to ensure deterrence for drug use and to allow at least a modicum of detection. There were a number of comments that stated that merely being subject to random testing provided adequate deterrence and detection. Some employer commenters stated that covered employees were unaware of the specific testing rates and that the employees believed that they could be caught at any time. Others denied that their company or industry had any significant problem and considered any but the most minimal testing a waste of time, money and energy. Others focused on the best way to spend the finite resources that could be devoted to drug use prevention.

As discussed in the NPRM, illegal drug use is different from alcohol misuse and these differences argue for a higher random drug testing rate. Drug usage is often harder to detect based on behavior and physical clues such as breath and body odor, or drug packaging. Alcohol passes through the body relatively quickly, while many drugs stay in the system for days, weeks or even months. Unlike alcohol use, most drug use is illegal and drug testing helps ensure deterrence and detection of even off-duty use.

Considering the vital public interest in protecting the safety of our transportation system and the data that show the deterrent and detection benefits of high random rates for drugs, the Department cannot justify permitting a reduction to 10 percent. Statistically, lowering the rate to 10 percent would result in less representative data since so few employees would be tested. Fewer tests result in less detection. So few tests would be conducted at a 10 percent rate that it might take a long time to notice any adverse effects or trends.

Data Required To Raise or Lower Testing Rate

The Department is requiring two years of data before a potential reduction in the testing rate because we want to make sure that the use of drugs is, in fact, demonstrably low and the data reflect more than a statistical aberration or an unusual year.

On the other hand, if an industry's data indicate a positive rate at or above 1.0 percent in any calendar year, we will raise the testing rate based on only one year's data. Our primary interest is ensuring safety and it is important to take a conservative approach. Under our approach, however, there is up to one year's time lag between a rise in positive test results and an increase in the random testing rate. In extraordinary circumstances that endanger public safety, we may need to take emergency action before the beginning of the calendar year.

One-Time Exception

There is one relatively minor change from the NPRM. Large transit companies and intrastate motor carriers will begin random testing on January 1, 1995, and small transit companies and intrastate motor carriers on January 1, 1996. If we required a positive rate of less than 1.0 percent for two years of testing at a 50 percent rate for the transit and motor carrier industries, the rate could not be lowered until January 1, 1999, at the earliest. Because interstate motor carriers have been testing for several years and transit and intrastate motor carriers can learn much from other transportation employers that have been testing for a number of years, and because FTA and FHWA will have received a significant amount of data over the first two years, we will provide a one-time exception from this general rule and allow the random testing rate to be reduced based on only one year of data from the entire industry and two years from its large entities. The Secretary, in consultation with the FTA and/or FHWA Administrators does, however, explicitly reserve the discretion to require another year of data from the small entities if he or she deems it necessary for safety. If the Department's review of the data indicates that it is insufficient to make a determination to lower the random testing rate to 25 percent, we will issue a notice saying that the rate will not be changed until one more year of data has been obtained.

Other Provisions

We are not making any change in the rule to account for the change in the marijuana initial test cutoff levels. The change merely allows for more urine specimens that contain marijuana metabolites to be identified. To the extent that there is minimal drug use in a given industry, this technical change should make little difference. That we will now be more successful in identifying positive samples is no reason to make the DOT drug testing rules more lenient. Improvements in technology that permit us to identify users who previously escaped detection are not a reason for lowering our standards.

The remainder of the proposals in the NPRM drew no public comment and are adopted without change. The final rule provides that if a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency, the employee is subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function. Similarly, the final rule provides that if an employer is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the employer may either establish separate pools for random selection, with each pool containing covered employees subject to testing at the same required rate, or establish one pool for testing all covered employees at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

If the employer conducts random testing through a consortium, the number of tests to be conducted may be calculated for each individual employer or may be based on the total number of covered employees subject to random testing by the consortium. In order to ensure deterrence, the dates for

administering random tests must be spread reasonably throughout the calendar year.

The final rule contains a number of definitions that mirror the alcohol testing rules. The term positive rate is defined in the definition section of each operating administration drug rule as, the number of positive results for random tests conducted under this part plus the number of refusals of random tests required by this part, divided by the total number of random tests conducted under this part plus the number of refusals of random tests required by this part. Refuse to submit means a covered employee (who) fails to provide a urine sample as required by 49 CFR Part 40, without a valid medical explanation, after he or she has received notice of the requirement to be tested in accordance with the provisions of this part, or engages in conduct that clearly obstructs the testing process. As a practical matter, this means that refusals to take a random drug test count as a positive result and would be added to the total number of random tests conducted for the purpose of calculating the industry positive rate. Since they are treated as if they are positive in terms of most of the rules consequences, we believe they should be counted in the totals. Moreover, without this approach, the system could be easily abused. For example, employers with high positive rates might have an incentive to subtly communicate that employees who test positive will be fired but employees who refuse to be tested will receive little or no punishment other than facing removal from duty and evaluation. The FAA, FRA and USCG also have other sanctions for refusals.

Adulteration of a urine sample is considered a refusal to test because it constitutes an obstruction of the testing process. As such, adulterated specimens are included in the calculation of the industry positive rate. Administrative or procedural errors during the testing process, such as breaking the container holding the sample, that result in canceled tests are not counted in the totals when calculating the industry random test rate.

Modal-Specific Actions

The Coast Guard is also removing existing (and no longer applicable) regulatory language that allowed existing marine employers to begin their random drug testing at a 25 percent annual rate (46 CFR 16.205(d)). This provision was included to reduce the initial burden that the then-new random drug testing program would impose on employers. Because the provision no longer serves any purpose, and may lead to confusion, the Coast Guard has removed this regulatory language.

RSPA is revising the random testing cycle to a calendar year beginning on January 1 and ending December 31. The December 23, 1994, Management Information System final rule requires operators to collect specified drug testing data in 1994, and to report that information to RSPA, on an annual basis beginning in 1995. Previously, operators had conducted random testing and maintained records on an April-April or August-August cycle. The revision will allow operators to conduct random testing and collect their drug testing data on a calendar year cycle.

The FAA is adding three definitions and amending a third definition to make the drug testing rule clearer and to parallel the alcohol testing rule. Contractor company is defined to mean a company that has employees who perform safety-sensitive functions by contract for an employer. DOT agency is defined to mean an agency (or operating administration) of the United States Department of Transportation administering regulations requiring drug testing (14 CFR part 61 et al.; 46 CFR part 16; 49 CFR parts 199, 219, and 382) in accordance with 49 CFR part 40. The FAA is also adding a provision to clarify current requirements concerning access to records. The provision provides that an employer required to conduct random drug testing under the anti drug rules of more than one DOT agency shall provide each such agency access to the employers records of random drug testing, as determined to be necessary by the agency to ensure the employers compliance with the rule. This provision is designed to resolve some confusion regarding compliance monitoring of multi-modal pools.

Implementation Dates

Based on the 1992-1993 data submitted to FRA and FAA, the railroad and aviation industries may begin testing at a minimum 25 percent random rate beginning January 1, 1995, because their positive rates were less than 1.0 percent in 1992 and 1993. Pipeline and marine employers will continue testing at 50 percent until they have 2 years of data showing that random positive rates for their industries are less than 1.0 percent. If the positive rates are below 1.0 percent for 1994 and 1995, then testing rates may be lowered to 25 percent beginning January 1, 1997.

Interstate motor carriers are currently testing at a minimum 50 percent testing rate and will continue to do so until the positive rate for the entire motor carrier industry (both interstate and intrastate and motor coach operations) is less than 1.0 percent. Large intrastate motor carriers will begin random drug testing at a minimum 50 percent testing rate on January 1, 1995, and small intrastate motor carriers will begin random testing at a 50 percent rate on January 1, 1996. We will allow the motor carrier industry to reduce its testing rate to 25 percent beginning on January 1, 1998, if the 1995 and 1996 data for those required to conduct random testing under the FHWA rule demonstrate a positive rate of less than 1.0 percent.

Large transit operators will begin random drug testing at a minimum 50 percent testing rate on January 1, 1995, and small transit operators will begin random testing at a 50 percent rate on January 1, 1996. If the 1995 and 1996 data for large transit operators combined with the 1996 data for small transit operators demonstrate a positive rate of less than 1.0 percent, we will allow the transit industry to reduce its testing rates to 25 percent beginning on January 1, 1998. Industries that do not meet the criterion will continue to test at a minimum 50 percent random testing rate.

Regulatory Analyses and Notices

DOT Regulatory Policies and Procedures

The final rule is considered to be a significant rulemaking under DOT Regulatory Policies and Procedures, 44 FR 11034, because of the substantial public and Congressional interest in this subject. A regulatory evaluation has been prepared and is available for review in the OST docket. This final rule was reviewed by the Office of Information and Regulatory Affairs pursuant to Executive Order 12866.

FAA estimates an average potential cost savings of approximately \$9 million per year for the aviation industry if the testing rate is dropped to 25 percent. USCG estimates an annual cost savings of between \$0.8 million to \$1.6 million annually for maritime; RSPA estimates \$1.4 million or more per year for pipelines; FRA estimates \$1 million per year for the railroad industry; FHWA estimates \$107 million per year or more for motor carriers; and FTA estimates an average of \$7 million per year or more for transit. Further detail is available in the OST final regulatory evaluation and the OA preliminary regulatory evaluations, which are available in the respective dockets.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

Based on the current positive testing rate data, the aviation and rail industries will qualify for a

reduction to a 25% testing rate in 1995. Although this change will result in substantial cost savings, there will be little economic impact on a substantial number of small entities in those industries. It is difficult to project which other transportation industries are likely to qualify for a reduction in the testing rate. The remaining transportation industries (motor carriers, pipelines, maritime, and transit) include many small companies. If the random testing rate were reduced in any of those industries, there might be a significant cost savings, as discussed in the accompanying regulatory evaluation. In addition, to the extent that the rate is lowered it might have a negative economic impact on those who provide services to employers covered under the rules, some of whom are small entities. Under the best circumstances, however, motor carriers, transit and pipeline industries could not reduce their testing rates until 1998. We therefore certify that this rule will not have a significant economic impact on a substantial number of small entities for at least the next several years.

Paperwork Reduction Act

There are a number of reporting or recordkeeping requirements associated with DOT-mandated drug testing. Some of the requirements are currently part of the OAs drug testing rules and some have been incorporated as a result of the final rules setting up the management information systems that were published in the **Federal Register** on December 23, 1993. To the extent that fewer random tests are required in a given transportation industry, there will be a proportionate reduction in recordkeeping, but no change in the reporting requirement.

Issued in Washington, D.C., on November 22, 1994.

Mortimer L. Downey,
Deputy Secretary.

FAA

14 CFR Chapter I

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Air transportation, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.,

For the reasons set out in the preamble, the Federal Aviation Administration amends 14 CFR part 121, as follows:

PART 121 CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COM-MERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1485, and 1502.

2. In Appendix I, Section II, the definitions of contractor company, DOT agency, and positive rate, are added in alphabetized order and the definition of refusal to submit, is amended, to read as follows:

chance of being tested each time selections are made.

6. The employer shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator. If the employer conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this part or any DOT drug testing rule.

7. Each employer shall ensure that random drug tests conducted under this appendix are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

8. If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency, the employee shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employees function.

9. If an employer is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the employer may

(a) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(b) Randomly select covered employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

10. An employer required to conduct random drug testing under the anti drug rules of more than one DOT agency shall provide each such agency access to the employers records of random drug testing, as determined to be necessary by the agency to ensure the employers compliance with the rule.

Issued in Washington, DC on November 22, 1994

David R. Hinson,
Administrator, Federal Aviation
Administration.

USCG

46 CFR Chapter I List of Subjects in 46 CFR Part 16

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation
For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 16, as follows:

PART 16CHEMICAL TESTING

1. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301 and 7701, 49 CFR 1.46.

2. In §16.105, the definitions of Positive rate and Refuse to submit are added in alphabetized order to read as follows:

§16.105 Definitions of terms used in this part.

testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Commandant. If the marine employer conducts random drug testing through a consortium, the number of crewmembers to be tested may be calculated for each individual marine employer or may be based on the total number of covered crewmembers covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this part or any DOT drug testing rule.

(h) Each marine employer shall ensure that random drug tests conducted under this part are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(i) If a given covered crew-member is subject to random drug testing under the drug testing rules of more than one DOT agency for the same marine employer, the crewmember shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the crewmembers function.

(j) If a marine employer is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the marine employer may

(1) Establish separate pools for random selection, with each pool containing the covered crewmembers who are subject to testing at the same required rate; or

(2) Randomly select such crewmembers for testing at the highest percentage rate established for the calendar year by any DOT agency to which the marine employer is subject.

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Issued in Washington, DC, November 22, 1994.

VADM A. E. Henn,

Acting Commandant, United States Coast Guard.

RSPA

9 CFR Chapter I

List of Subjects in 49 CFR Part 199

Pipeline safety, Drug testing, Recordkeeping and reporting.

For the reasons set out in the preamble, RSPA amends 49 CFR Part 199, as follows:

PART 199 - DRUG AND ALCOHOL TESTING

1. The authority citation for Part 199 is revised to read as follows:

Authority: 49 U.S.C. 60101 et seq.; 49 CFR 1.53.

2. Section 199.3 is amended by adding the following definitions in alphabetical order:

§199.3 Definitions.

* * * * *

Positive rate means the number of positive results for random drug tests conducted under this subpart plus the number of refusals of random tests required by this subpart, divided by the total number of random drug tests conducted under this subpart plus the number of refusals of random tests required

by this subpart.

Refuse to submit means that a covered employee fails to provide a urine sample as required by 49 CFR Part 40, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement to be tested in accordance with the provisions of this subpart, or engages in conduct that clearly obstructs the testing process.

3. Section 199.11 is amended by revising paragraph (c) to read as follows:

§199.11 Drug tests required.

(c) Random testing. (1) Except as provided in paragraphs (c)(2) through (4) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees.

(2) The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the drug MIS reports required by this subpart. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from operators, and may make appropriate modifications in calculating the industry positive rate. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rate for random drug testing of covered employees. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication.

(3) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of §199.25 for two consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(4) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of §199.25 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent for all covered employees.

(5) The selection of employees for random drug testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

(6) The operator shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator. If the operator conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual operator or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this subpart or any DOT drug testing rule.

(7) Each operator shall ensure that random drug tests conducted under this subpart are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(8) If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency for the same operator, the employee shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employees function.

(9) If an operator is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the operator may

(i) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(ii) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the operator is subject.

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Issued in Washington, D.C. on November 22, 1994.

D.K. Sharma,
Administrator, Research and
Special Programs Administration.

FRA

49 CFR Chapter II

List of Subjects in 49 CFR Part 219

Alcohol and drug abuse, Railroad safety, Reporting and recordkeeping requirements.
For the reasons stated in the preamble, FRA amends 49 CFR Part 219, as follows:

PART 219 CONTROL OF ALCOHOL AND DRUG USE

1. The authority for part 219 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20113, 20140, 21301, 21304, and 49 CFR 1.49(m).

2. Section 219.5 is amended by adding, in alphabetical order, definitions for positive rate and refuse to submit as follows:

§219.5 Definitions.

* * * * *

Positive rate means the number of positive results for random drug tests conducted under this part plus the number of refusals of random tests required by this part, divided by the total number of random drug tests conducted under this part plus the number of refusals of random tests required by this part.

* * * * *

Refuse to submit means that a covered employee fails to provide a urine sample as required by 49 CFR Part 40, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement to be tested in accordance with the provisions of this part, or engages in conduct that clearly obstructs the testing process.

* * * * *

3. Section 219.602 is added as follows:

§219.602 Administrator's determination of random drug testing rate.

(a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees.

(b) The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the drug MIS reports required by this part. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from railroads, and may make appropriate modifications in calculating the industry positive rate. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rate for random drug testing of covered employees. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication.

(c) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of §219.803 for two consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(d) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of §219.803 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent for all covered employees.

(e) Selection of covered employees for testing shall be made by a method employing objective, neutral criteria which ensures that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, i.e., no employee may be selected as a result of the exercise of discretion by the railroad. The selection method shall be capable of verification with respect to the randomness of the selection process.

(f) The railroad shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator. If the railroad conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual railroad or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this part or any DOT drug testing rule.

(g) Each railroad shall ensure that random drug tests conducted under this part are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(h) If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency for the same railroad, the employee shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employees function.

(i) If a railroad is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the railroad may

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the railroad is subject.

Issued in Washington, DC, November 22, 1994.

Donald M. Itzkoff.

Deputy Administrator, Federal
Railroad Administration.

FHWA

49 CFR Chapter III

List of Subjects in 49 CFR Part 382

Alcohol and drug abuse, Highway safety, Reporting and recordkeeping requirements.
For the reasons stated in the preamble, the FHWA amends 49 CFR part 382, as follows:

PART 382 CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

1. The authority for part 382 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 et seq., 31502; and 49 CFR 1.48.

2. Section 382.107 is amended by adding, in alphabetical order, a definition for positive rate and revising the definition of refuse to submit as follows:

§382.107 Definitions.

* * *

Positive rate means the number of positive results for random controlled substances tests conducted under this part plus the number of refusals of random controlled substances tests required by this part, divided by the total of random controlled substances tests conducted under this part plus the number of refusals of random tests required by this part.

* * *

Refuse to submit (to an alcohol or controlled substances test) means that a driver:

- (1) Fails to provide adequate breath for alcohol testing as required by Part 40 of this title, without a valid medical explanation, after he or she has received notice of the requirement for breath testing in accordance with the provisions of this part.
- (2) Fails to provide an adequate urine sample for controlled substances testing as required by Part 40 of this title, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement for urine testing in accordance with the provisions of this part, or
- (3) Engages in conduct that clearly obstructs the testing process.

3. Section 382.305 is revised to read as follows:

§382.305 Random testing.

- (a)(1) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random alcohol testing shall be 25 percent of the number of drivers each selection period.
- (2) Except as provided in paragraphs (e) through (g) of this section, the minimum annual

percentage rate for random controlled substances testing shall be 50 percent of the number of drivers each selection period.

(b) The FHWA Administrators decision to increase or decrease the minimum annual percentage rate for alcohol testing is based on the reported violation rate for the entire industry. All information used for this determination is drawn from the alcohol management information system reports required by §382.403 of this part. In order to ensure reliability of the data, the FHWA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. Each year, the FHWA Administrator will publish in the **Federal Register** the minimum annual percentage rate for random alcohol testing of drivers. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication.

(c)(1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the FHWA Administrator may lower this rate to 10 percent of all drivers if the FHWA Administrator determines that the data received under the reporting requirements of §382.403 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(2) When the minimum annual percentage rate for random alcohol testing is 50 percent, the FHWA Administrator may lower this rate to 25 percent for all drivers if the FHWA Administrator determines that the data received under the reporting requirements of §382.403 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(d)(1) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of §382.403 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the FHWA Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent for all drivers.

(2) When the minimum alcohol percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of §382.403 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the FHWA Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent for all drivers.

(e) The FHWA Administrators decision to increase or decrease the minimum annual percentage rate for controlled substances testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the controlled substances management information system reports required by §382.403 of this part. In order to ensure reliability of the data, the FHWA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry positive rate. Each year, the FHWA Administrator will publish in the **Federal Register** the minimum annual percentage rate for random controlled substances testing of drivers. The new minimum annual percentage rate for random controlled substances testing will be applicable starting January 1 of the calendar year following publication.

(f) When the minimum annual percentage rate for random controlled substances testing is 50 percent, the FHWA Administrator may lower this rate to 25 percent of all drivers if the FHWA Administrator determines that the data received under the reporting requirements of §382.403 for two consecutive calendar years indicate that the positive rate is less than 1.0 percent. However, after the calendar year 1994 of random testing for interstate motor carriers under part 391, subpart H and the initial calendar year of testing by large employers under this section, the FHWA Administrator may lower the rate for calendar year 1997, if the combined positive testing rate is less than 1.0 percent, and if it would be in the interest of safety.

(g) When the minimum annual percentage rate for random controlled substances testing is 25 percent, and the data received under the reporting requirements of §382.403 for any calendar year

indicate that the reported positive rate is equal to or greater than 1.0 percent, the FHWA Administrator will increase the minimum annual percentage rate for random controlled substances testing to 50 percent of all drivers.

(h) The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each driver shall have an equal chance of being tested each time selections are made.

(i) The employer shall randomly select a sufficient number of drivers for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol and controlled substances testing determined by the FHWA Administrator. If the employer conducts random testing for alcohol and/or controlled substances through a consortium, the number of drivers to be tested may be calculated for each individual employer or may be based on the total number of drivers covered by the consortium who are subject to random alcohol and/or controlled substances testing at the same minimum annual percentage rate under this part or any DOT alcohol or controlled substances random testing rule.

(j) Each employer shall ensure that random alcohol and controlled substances tests conducted under this part are unannounced and that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year.

(k) Each employer shall require that each driver who is notified of selection for random alcohol and/or controlled substances testing proceeds to the test site immediately; provided, however, that if the driver is performing a safety-sensitive function at the time of notification, the employer shall instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(l) A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(m) If a given driver is subject to random alcohol or controlled substances testing under the random alcohol or controlled substances testing rules of more than one DOT agency for the same employer, the driver shall be subject to random alcohol and/or controlled substances testing at the annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the drivers function.

(n) If an employer is required to conduct random alcohol or controlled substances testing under the alcohol or controlled substances testing rules of more than one DOT agency, the employer may

(1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or

(2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the employer is subject.

Issued: Washington, DC on November 22, 1994.

Rodney Slater,
Administrator, Federal Highway
Administration

FTA

49 CFR Chapter VI

operators, the Administrator may lower the rate the following calendar year, if combined positive testing rate is less than 1.0 percent, and if it would be in the interest of safety.

(d) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of §653.73 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees.

(e) The selection of employees for random drug testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees Social Security numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

(f) The employer shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator. If the employer conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this part or any DOT drug testing rule.

(g) Each employer shall ensure that random drug tests conducted under this part are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(h) If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency for the same employer, the employee shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employees function.

(i) If an employer is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the employer may

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

Issued in Washington, DC on November 22, 1994.

Gordon J. Linton,
Administrator, Federal Transit
Administration.

[FR Doc. 94-29289 Filed 11-29-94; 12:02 pm]

unavailable.

DATES: The amendments to the FAA, RSPA, FRA, FHWA, and FTA alcohol testing regulations are effective January 1, 1995. Comments concerning the reporting requirement added to the five operating administration alcohol testing regulations should be received by January 17, 1995. Late filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket No. 49384, Room 4107, Department of Transportation, 400 7th Street, S.W., Washington D.C., 20590. This is a consolidated docket that will accept comments on the amendments to all five operating administration rules involved. Commenters wishing to have their comments acknowledged should send a stamped, self-addressed postcard with their comments. The Docket Clerk will date stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Acting Director, Department of Transportation Office of Drug Enforcement and Program Compliance, 400 7th Street, S.W., Washington, D.C., 20590 (202-366-3784).

SUPPLEMENTARY INFORMATION: This rulemaking concerns the Department of Transportation's alcohol testing requirements. Larger employers are required to begin alcohol testing in accordance with the Department's regulations on January 1, 1995. Smaller employers are required to begin testing on July 1, 1995, or January 1, 1996, as provided in applicable operating administration rules. Those employers who are scheduled to begin testing January 1, 1995, are expected to be ready to begin testing on that date, including acquisition of equipment and training of personnel. No post-ponements of this compliance date have been granted. Since employers will have been on notice of this compliance date since February 15, 1994, the Department believes that employers will have had a reasonable time to prepare.

The NPRM

When the Department proposed the alcohol testing rules that it adopted in February 1994, one of the most important, most frequently commented-upon issues was the choice of testing methodology. After carefully considering comments about a variety of methods and devices, including arguments concerning the degree of discretion employers should have in choosing a testing method, the Department decided that the use of evidential breath testing devices (EBTs) was the most appropriate approach to take. The Department discussed the reasons for this decision at some length in the preamble to its alcohol testing procedures rule. See 59 FR 73427347; February 15, 1994.

At the same time, the Department sought comments, through a notice of proposed rulemaking (NPRM), on whether the Department should authorize blood testing for alcohol to be used in certain specific, very limited circumstances. See 59 FR 7367-7371; February 15, 1994. Under the proposal, blood would be used only in those reasonable suspicion and post-accident testing circumstances where it is not practicable to use breath testing. *Id.* at 7367. The Department specifically noted that blood testing was not intended, under the proposal, to be an equal alternative method that an employer can choose as a matter of preference. *Id.* The NPRM did not propose re-opening the underlying decision that breath testing is to be the basic testing method under the rules.

The rationale for the proposal was that in some circumstances, the unavailability of EBTs * * * may make breath testing impracticable. *Id.* The Department noted that

[R]easonable suspicion and post-accident tests are more likely than other kinds of tests to happen at unpredictable times and in remote locations * * * [I]t may be substantially easier and less costly to

arrange for a blood alcohol test [than a breath test] in these circumstances. In some cases, it may be impossible to get an EBT to a remote location in time to conduct a meaningful test. *Id.*

Under such circumstances, the NPRM said, it might be better to test using blood, despite its known disadvantages (which the preambles to both the Part 40 final rule and the NPRM spelled out), than to be unable to complete a reasonable suspicion or post-accident test. The NPRM noted that there would probably be a small number of such tests per year (roughly estimated at 2500 per year), which could mitigate the effect of these disadvantages.

The remainder of the NPRM proposed procedures that would be used in the event the Department adopted the proposal. These proposals addressed such subjects as collection procedures, qualification of testing personnel, laboratories and laboratory procedures, and fatal flaws that would invalidate tests.

Comments

The Department received 185 comments on this NPRM. The commenters included 15 transportation employers or their associations, 9 testing industry organizations, 6 unions, and 155 individual transportation employees. Several months after the close of the comment period, the Department received additional correspondence on this subject, but the comments arrived so late in the rulemaking process that it was not practicable to consider them.

Comment was divided on the basic issue of whether blood testing should be authorized. Employee comments were uniformly against the proposal. Six unions representing transportation workers and 155 individual transportation employees opposed blood testing. They cited a number of reasons. Blood testing was too invasive, causing pain and fear in many employees and severely invading employees' privacy. There was no possibility of immediate confirmation. There would be too much employer discretion as to when blood could be used, which could lead to abuse (e.g., overuse of blood by employers). Some of these comments expressed concern about incompetent or dangerous collection practices. Two additional commenters (one of whom favored using blood testing) expressed concern about confrontations arising from employees who objected to giving blood.

Twenty-five commenters, most of them employers or employer associations, favored blood testing. Thirteen of these endorsed the NPRM proposal. Most did so on the basis that it would be less costly and more convenient to be able to use blood testing for reasonable suspicion and post-accident testing. Specifically, commenters were concerned that, in the absence of a blood option for these types of testing, employers would have to buy an unreasonably large number of EBTs to cover all their work locations. The other 12 commenters in this group favored much wider discretion for employers, saying that blood testing should be available for confirmation in all types of testing, with non-evidential devices (such as saliva devices) available for screening tests. The result would be that EBTs need never be obtained or used. Employers in the pipeline industry were particularly in favor of this approach, noting that only reasonable suspicion and post-accident alcohol tests are required for their industry, which has employees at many remote sites.

A related issue was how to define readily available. The NPRM proposed that blood could be used when breath testing was not readily available, and asked for comment on what that term should mean. Five commenters believed that a specific number of hours (e.g., two or eight) should be used as the criterion. That is, if breath testing could not be performed within that number of hours after the event leading to the test, then blood could be used. Nine commenters, to the contrary, said that employers should be able to decide when breath testing was readily available, based on such factors as cost, convenience, or preference. (One comment, on the other hand, said employers should never have this discretion.) The latter view was advocated by several of the commenters who favored a broader use of blood testing than the NPRM proposed, as it would reduce the number of occasions on which breath

the greater invasiveness of this approach would, on the whole, make employee acceptance of the program more, rather than less, difficult to obtain. Employee acceptance is one factor that leads to the success of an alcohol misuse prevention program.

Another factor we have taken into consideration is the added program complexity that would result from including blood testing in the Department's programs. Laboratories would have to be certified to test the blood samples. As the division among commenters on this point demonstrates, the best solution to this problem is not clear. In our view, DHHS certification would be the highest standard for accuracy and reliability of testing. However, there would be considerable costs to laboratories and the Department, as well as some delays in program implementation, if DHHS had to create a laboratory certification program for blood alcohol testing, as it has for urine drug testing. Assuming that the number of tests involved is small (see discussion below) it might well not be cost effective for laboratories to go through a DHHS certification process. State-certified laboratories appear to vary in reputation for quality as well as in terms of availability; not all states have state or state-certified laboratories that would accept specimens for purposes of DOT-mandated testing.

As mentioned in the preamble of the NPRM, the Department has expressly declined to use laboratories certified by private organizations (such as the CAP) in the drug testing context, and the comments did not provide a persuasive rationale for taking a different course with respect to alcohol testing. Using state or privately certified laboratories as an interim measure until DHHS-certified laboratories are ready could create concern among employees and employers about ensuring the highest level of accuracy in the program. The other procedural issues discussed in the comments—DOT national uniform procedures vs. reliance on differing state procedures, whether there should be a standard DOT blood testing kit and what should be in it, what should constitute a fatal flaw, etc.—also suggest that it would be a very complex matter to devise an appropriate set of procedures for blood testing.

Other questions arise because of the relationship of non-evidential screening test devices and blood tests. For example, suppose a saliva screening device indicates that an employee tests positive for alcohol. The blood test result will not be available from the laboratory for two or three days. What happens to the employee in the meantime? This is a problem we do not face with evidential breath testing, since a confirmation test result is available immediately, a point which we view as a significant advantage of breath testing.

In the drug testing rules, we explicitly prohibit on-site testing, in part for the reason that we consider it inappropriate for an employer to take any action against an employee, absent a confirmed and verified positive test result. (Concern about the accuracy of devices was also involved in this decision.) A similar situation would occur if an employee had a positive on-site screening test for alcohol and the employer stood him or her down pending receipt of the laboratory confirmation test result. On the other hand, from a safety point of view, there is much to recommend to employers that they stand an employee down after a positive on-site screening test, since no one wants to send (for example) a truck driver back onto the road when we have a test result suggesting that the driver may have alcohol in his or her system. The comments on the subject favored standing employees down in this situation.

Should the Department, contrary to the drug testing rules, permit or require the employer to stand an employee down in this situation? If the employer stands an employee down in this situation, should DOT rules mandate that the employer pay the employee for the stand down period? In any case? Only if the confirmation test is negative? These are difficult and troubling questions, to which the best answers are far from self-evident.

This is not to say that the issues of invasiveness, added procedural complexity, and stand-down are incapable of resolution. But is it worthwhile, from the point of view of employers, employees, and the Department, to create a new component of the alcohol testing program carrying these problems with it? The basic rationale for adding blood testing to the program is that, in its absence, employers will miss post-accident and reasonable suspicion tests. That is, there will be situations in which, because breath

testing cannot be made available within eight hours, a post-accident or reasonable suspicion test that the regulations call for will not take place at all. In some number of these cases, blood testing might be available where breath testing is not.

How often will there be reasonable suspicion and post-accident tests that are missed because of the unavailability of breath testing that would be caught by blood testing? Our expectation is that there would be a small number of such situations. First, occasions for post-accident and reasonable suspicion tests are likely to be far fewer in number than occasions for pre-employment and random tests. The motor carrier industry accounts for 7.0 million of the approximately 7.8 million transportation employees who will be subject to alcohol testing. FHWA's very stringent criteria for post-accident testing (only a (1) fatal accident or (2) an accident in which the driver is issued a citation for a moving violation plus either (a) there is disabling damage to a vehicle or (b) an injury requiring immediate medical treatment away from the scene results in a post-accident test) mean that only a small percentage of all motor carrier accidents are likely to result in post-accident tests. The nature of drivers' jobs, which do not involve frequent or long-term observation by supervisors, suggests that there will be relatively few occasions for reasonable suspicion tests. The pipeline industry, in which most accidents happen because of non-pipeline employees damaging pipelines (e.g., construction crews digging into a pipeline), and in which employees may often operate in remote locations with little supervision, appears to share this relatively low probability of reasonable suspicion and post-accident testing. We also anticipate few shy lung situations, and Part 40 has a provision to deal with them.

Other industries, which involve closer supervision of employees and/or broader definitions of triggering accidents may produce somewhat greater rates of post-accident or reasonable suspicion test situations. (In one of these, the railroad industry, post-accident blood testing is done by FRA under a long-standing rule using an FRA contract lab. Nothing in this today's action in any way changes FRA's existing requirements involving blood testing.) However, since the absolute numbers of employees in these industries are much smaller, they will have less of an effect on the total number of such occasions. Even in these industries, the numbers may not be very high. Data from the aviation industry, for example, suggests that there have been relatively few post-accident or reasonable cause drug tests (e.g., 720 out of 268,809 total tests conducted in 1993 under the FAA rule).

This brings us to the next factor. What data we have from situations where reasonable suspicion/cause tests have been administered for both drugs and alcohol suggests that there may be substantially fewer such tests for alcohol than for drugs. For example, recent railroad industry data suggest that of the total of such tests, alcohol tests made up only about 17 percent of the total.

Finally, we expect that a substantial percentage of the reasonable suspicion and post-accident testing situations can be caught by breath testing. This is particularly true in those industries (e.g., the railroad, transit, and aviation industries) where employees perform most safety-sensitive duties on known routes or in known locations, and where supervision is more readily available. Even in the motor carrier industry, the provision in the FHWA rule that allows use for purposes of the DOT testing program of results of tests conducted by law enforcement can help to reduce the incidence of missed tests.

However, there are likely to be some situations in which no testing method including blood can be brought to bear in time to conduct a post-accident or reasonable suspicion test. The oft-mentioned example of a truck accident at 2 a.m. on a remote highway in the middle of the desert may well be an example of a situation in which blood, as well as breath, testing will not be available in a timely manner. Certainly it would be a doubtful assumption that all, or perhaps even a majority, of tests that would be missed with breath would be caught with blood.

Consequently, if we added blood testing to the alcohol testing program as proposed in the NPRM, we would be incurring the disadvantages of such a step in order to catch a subset of a subset of the universe of all reasonable suspicion and post-accident alcohol tests required under the Department's rules. This universe itself will probably not be a large one. Many of the tests can be caught by breath

testing. Of those that cannot, many could not be caught by blood testing either.

In the NPRM, we made a rough estimate of perhaps 2500 situations per year in which blood would catch a test that breath could not. Commenters did not present data suggesting that the number would be significantly higher; we tend to think, at this time, that the estimate may have been too high.

We have concluded that it is not worth subjecting employees to an invasive testing procedure and incurring the other disadvantages of adding blood alcohol testing to our program to capture this probably small number of cases. For this reason, we are withdrawing the proposed authorization of the use of blood in some post-accident and reasonable suspicion test situations, and we will not include blood testing as a part of the DOT alcohol testing program. As noted below, we are issuing a final rule establishing a temporary reporting requirement concerning missed reasonable suspicion and post-accident tests.

We believe that following this course will be less disadvantageous to employers than some commenters appear to believe. There is no requirement in the DOT rules and never has been that employers buy their own EBT for every conceivable location in which a reasonable suspicion or post-accident test could occur, including every company facility or location. We expect that companies may move EBTs around from facility to facility for scheduled tests such as pre-employment and random tests. For the non-scheduled reasonable suspicion and post-accident tests, we expect employers to take reasonable steps to ensure coverage. We recognize that tests will not be able to be completed in some instances. That is why, for example, the reasonable suspicion and post-accident testing provisions of the alcohol rules issued by the operating administrations on February 15, 1994, tell employers to discontinue attempts at testing after eight hours but require them to keep a record explaining the inability to conduct the test.

Consortia and third-party service providers can often provide both more economical service and wider coverage than employers would find possible on their own. Reimbursable agreements among employers, even across various industries, could make EBT and BAT services available in locations where a single employer would not have coverage. The operating administrations will also provide guidance and work with their employers to ensure appropriate coverage by employers. Finally, the Department recognizes that there will be some situations in which the best good faith efforts on the part of an employer (as distinct from an abdication of the effort) cannot result in a test being completed. That is, we acknowledge and accept the fact that there will be some missed tests.

The Departments judgment on this issue is based, to a considerable extent, on the premise that there will not be excessive numbers of missed tests. This premise, while based on a logical view of how our program will work, is not, at this stage, based on hard data. This is because the alcohol testing program has not begun yet, so there is little data on which we can rely. (That is, the first MIS reports for alcohol are not due until March 15, 1996. The first MIS reports for drugs are not due until March 15, 1995, so we do not even have comprehensive data yet for drug testing in most of the affected industries which might serve as a basis for inferences about the alcohol testing program.) For this reason, the Department is modifying an existing regulatory requirement to generate relevant data.

All the operating administration alcohol testing regulations include a requirement for employers to prepare and maintain on file a record of when a post-accident or reasonable suspicion test is not administered within eight hours. At this point, the employer must stop attempts to administer the test. This is, in other words, an existing requirement to document a missed test and the reasons for it. This requirement applies to all covered employers.

For a three-year period beginning January 1, 1995, the Department will require those employers who transmit an MIS report to the Department to transmit a copy of these records along with their MIS report. They should be sent to the same address as MIS reports are sent for the operating administration involved. Reports should be sent to the operating administration only at the time that MIS reports are sent. That is, the employer should send a year's worth of reports (a separate report for each missed test)

the Departments existing alcohol testing requirements, it pertains to a Department-wide regulatory program, and has been reviewed by all concerned Departmental offices and the Office of Management and Budget (OMB). The costs and benefits of alcohol testing were fully analyzed as part of the final rules issued February 15, 1994. Because the rule does impose a new reporting requirement, we have submitted this requirement to OMB for review under the Paperwork Reduction Act. The new reporting requirement will not be effective until OMB has approved it. DOT will publish a **Federal Register** notice when OMB approves the requirement.

Under the Regulatory Flexibility Act, the Department certifies that the requirements imposed by this rule will not have a significant economic effect on a substantial number of small entities. There are not sufficient Federalism impacts to warrant a Federalism assessment under Executive Order 12612.

List of Subjects

14 CFR Part 121

Air carriers, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Alcohol, Alcoholism, Aviation safety, Pilots, Safety, Transportation.

49 CFR Part 199

Alcohol testing, Drug testing, Pipeline safety, Recordkeeping and reporting.

49 CFR Part 219

Alcohol and drug abuse, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 382

Alcohol testing, Controlled substances testing, Highways and roads, Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 654

Alcohol testing, Grant program transportation, Mass transit, Reporting and recordkeeping requirements, Safety, Transportation.

Issued this 22nd day of November, 1994, at Washington, D.C.

Mortimer L. Downey,
Deputy Secretary.

David R. Hinson,
Administrator, Federal Aviation Administration.

D.K. Sharma,
Administrator, Research and Special Programs Administration.

S. Mark Lindsey,
Acting Deputy Administrator, Federal Railroad Administration.

Rodney E. Slater,
Administrator, Federal Highway Administration.

Gordon J. Linton,
Administrator, Federal Transit Administration.

For the reasons set forth in the preamble, the Department of Transportation amends 14 CFR Part 121, 49 CFR Part 199, 49 CFR Part 219, 49 CFR Part 382, and 49 CFR Part 654, as follows:

14 CFR CHAPTER I

PART 121 CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1354(a), 1355, 1356, 1357, 1401, 1421, 1430, 1485, and 1502.

2. In Appendix J to Part 121, paragraph III. B. 2. is amended by designating the existing text as paragraph (a) and adding a new paragraph (b), to read as follows:

Appendix J to Part 121 Alcohol Misuse Prevention Program

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III Tests Required

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B. Post-accident

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2. (a) • • • •

(b) For the years stated in this paragraph, employers who submit MIS reports shall submit to the FAA each record of a test required by this section that is not completed within 8 hours. The employers records of tests that are not completed within 8 hours shall be submitted to the FAA by March 15, 1996; March 15, 1997; and March 15, 1998; for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

- (i) Type of test (reasonable suspicion/post-accident);
- (ii) Triggering event (including date, time, and location);
- (iii) Employee category (do not include employee name or other identifying information);
- (iv) Reason(s) test could not be completed within 8 hours; and
- (v) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

• • • • •

3. In Appendix J to Part 121, paragraph III D. 4. is amended by designating the existing

paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and adding a new paragraph (b), to read as follows:

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III. Tests Required

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D. Reasonable suspicion testing

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4. • • • • •

(b) For the years stated in this paragraph, employers who submit MIS reports shall submit to the FAA each record of a test required by this section that is not completed within 8 hours. The employer's records of tests that are not completed within 8 hours shall be submitted to the FAA by March 15, 1996; March 15, 1997; and March 15, 1998; for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

(i) Type of test (reasonable suspicion/post-accident);

(ii) Triggering event (including date, time, and location);

(iii) Employee category (do not include employee name or other identifying information);

(iv) Reason(s) test could not be completed within 8 hours; and

(v) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

• • • • •

49 CFR CHAPTER I

PART 199 DRUG AND ALCOHOL TESTING

4. The authority citation for Part 199 is revised to read as follows:

Authority: 46 U.S.C. 60101 et seq.; 49 CFR 1.53.

5. Section 199.225 is amended by designating the existing text of paragraph (a)(2) as paragraph (a)(2)(i) and adding a new paragraph (a)(2)(ii), to read as follows:

§199.225 Alcohol tests required.

• • • • •

(a) Post-accident. • • •

(2)(i) • • •

(ii) For the years stated in this paragraph, employers who submit MIS reports shall submit to RSPA each record of a test required by this section that is not completed within 8 hours. The employer's records of tests that could not be completed within 8 hours shall be submitted to RSPA by March 15, 1996; March 15, 1997; and March 15, 1998; for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

(A) Type of test (reasonable suspicion/post-accident);

(B) Triggering event (including date, time, and location);

(C) Employee category (do not include employee name or other identifying information);

submitted to the FRA by March 15, 1996; March 15, 1997; and March 15, 1998; for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

- (i) Triggering event (including date, time, and location);
- (ii) Employee category (do not include employee name or other identifying information);
- (iii) Reason(s) test could not be completed within 8 hours; and
- (iv) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

§219.302 [Amended]

10. Section 219.302 is amended by removing paragraph (f).

49 CFR CHAPTER III

PART 382 CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

11. The authority citation for 49 CFR Part 382 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301, et seq., 31502; and 49 CFR 1.48.

12. Section 382.303 is amended by designating the existing text of paragraph (b)(2) as paragraph (b)(4) and adding new paragraphs (b)(2) and (b)(3), to read as follows:

§382.303 Post-accident testing.

• • • • •
(b) • • • • • (1) • • • • •

(2) For the years stated in this paragraph, employers who submit MIS reports shall submit to the FHWA each record of a test required by this section that is not completed within 8 hours. The employer's records of tests that are not completed within 8 hours shall be submitted to the FHWA by March 15, 1996; March 15, 1997; and March 15, 1998; for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

- (i) Type of test (reasonable suspicion/post-accident);
- (ii) Triggering event (including date, time, and location);
- (iii) Reason(s) test could not be completed within 8 hours; and
- (iv) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

(3) Records of tests that could not be completed in 8 hours shall be submitted to the FHWA at the following address: Attn.: Alcohol Testing program [sic], Office of Motor Carrier Standards (HCS1), Federal Highway Administration, 400 Seventh Street, S.W., Washington, DC 20590.

- • • • •
13. Section 382.307 is amended by designating the existing text of paragraphs (e)(2) and (e)(3) as paragraphs (e)(4) and (e)(5), respectively, and adding new paragraphs (e)(2) and (e)(3), to read as follows:

§382.307 Reasonable suspicion testing.

• • • • •

(e) * * *

(2) For the years stated in this paragraph, employers who submit MIS reports shall submit to the FHWA each record of a test required by this section that is not completed within 8 hours. The employer's records of tests that could not be completed within 8 hours shall be submitted to the FHWA by March 15, 1996; March 15, 1997; and March 15, 1998; for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

- (i) Type of test (reasonable suspicion/post-accident);
- (ii) Triggering event (including date, time, and location);
- (iii) Reason(s) test could not be completed within 8 hours; and
- (iv) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

(3) Records of tests that could not be completed in 8 hours shall be submitted to the FHWA at the following address: Attn: Alcohol Testing Program, Office of Motor Carrier Standards (HCS1), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

49 CFR CHAPTER VI

PART 654 PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

14. The authority citation for 49 CFR Part 654 is revised to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

15. Section 654.33 is amended by designating the existing text of paragraph (b) as paragraph (b)(1) and adding a new paragraph (b)(2), to read as follows:

§654.33 Post-accident testing.

* * *
(b) (1) * * *

(2) For the years stated in this paragraph, the employer shall submit to the FTA each record of a test required by this section that is not completed within 8 hours. The employer's records of tests that could not be completed within 8 hours shall be submitted to the FTA by March 15, 1996; March 15, 1997; and March 15, 1998; for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

- (i) Type of test (reasonable suspicion/post-accident);
- (ii) Triggering event (including date, time, and location);
- (iii) Employee category (do not include employee name or other identifying information);
- (iv) Reason(s) test could not be completed within 8 hours; and
- (v) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

16. Section 654.37 is amended by designating the existing text of paragraphs (d)(2) and (d)(3) as paragraphs (d)(3) and (d)(4), respectively, and adding a new paragraph (d)(2), to read as follows:

§654.37 Reasonable suspicion testing.

• • • • •
(d) • • •

(2) For the years stated in this paragraph, the employer shall submit to the FTA each record of a test required by this section that is not completed within 8 hours. The employer's records of tests that could not be completed within 8 hours shall be submitted to the FTA by March 15, 1996; March 15, 1997; and March 15, 1998; for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

- (i) Type of test (reasonable suspicion/post-accident);
- (ii) Triggering event (including date, time, and location);
- (iii) Employee category (do not include employee name or other identifying information);
- (iv) Reason(s) test could not be completed within 8 hours; and
- (v) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

[FR Doc. 94-29643 Filed 11-29-94; 12:03 pm]

Rulemaking Analysis and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. This rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This final rule does not require a Regulatory Impact Analysis, or a regulatory evaluation or an environmental assessment or impact statement under the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism") and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor corrections which will not impose any new requirements on persons subject to the Pipeline Safety Regulations; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

Lists of Subjects

49 CFR Part 190

Administrative practice and procedure, Penalties, Pipeline safety

49 CFR Part 191

Pipeline safety, Reporting and recordkeeping requirements

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements

49 CFR Part 193

Fire prevention, Pipeline safety, Reporting and recordkeeping requirements, Security measures

49 CFR Part 195

Houston, Texas (Southwest Region); and Lakewood, Colorado (Western Region). Respondent means a person upon whom the OPS has served a notice of probable violation. RSPA means the Research and Special Programs Administration of the United States Department of Transportation.

State means a State of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

4. Section 190.7 is amended by revising paragraphs (d) and (i), introductory text, to read as follows:

§190.7 Subpoenas; witness fees.

• • • • •
(d) Service of a subpoena upon the person named therein shall be made by delivering a copy of the subpoena to such person and by tendering the fees for one day's attendance and mileage as specified by paragraph (g) of this section. When a subpoena is issued at the instance of any officer or agency of the United States, fees and mileage need not be tendered at the time of service. Delivery of a copy of a subpoena and tender of the fees to a natural person may be made by handing them to the person, leaving them at the person's office with the person in charge thereof, leaving them at the person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, by mailing them by registered or certified mail to the person at the last known address, or by any method whereby actual notice is given to the person and the fees are made available prior to the return date.

• • • • •
(i) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, apply to the official who issued the subpoena, or if the person is unavailable, to the Administrator, RSPA to quash or modify the subpoena. The application shall contain a brief statement of the reasons relied upon in support of the action sought therein. The Administrator, RSPA, or this issuing official, as the case may be, may:

• • • • •
5. Section 190.9 is amended by revising paragraph (b)(1)(i) to read as follows:

§190.9 Petitions for finding or approval.

• • • • •
(b) • • •

(1) • • •

(i) The State agency certified to participate under 49 U.S.C. 60105.

• • • • •
6. Section 190.201 is amended by revising paragraph (a) to read as follows:

§190.201 Purpose and scope.

(a) This subpart describes the enforcement authority and sanctions exercised by the Associate Administrator, OPS for achieving and maintaining pipeline safety. It also prescribes the procedures governing the exercise of that authority and the imposition of those sanctions.

7. Section 190.203 is amended by revising paragraphs (a), (b)(1), (b)(4), and (d) to read as follows:

§190.203 Inspections.

(a) Officers, employees, or agents authorized by the Associate Administrator, OPS upon presenting appropriate credentials, are authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties are relevant to determining the compliance of such persons with the requirements of 49 U.S.C. 60101 et seq. or regulations, or orders issued thereunder.

(b) * * *

(1) Routine scheduling by the Regional Director of the Region in which the facility is located:

* * *

(4) Report from a State Agency participating in the Federal Program under 49 U.S.C. 60105.

* * *

(d) To the extent necessary to carry out the responsibilities under 49 U.S.C. 60101 et seq., the Administrator, RSPA or the Associate Administrator, OPS may require testing of portions of pipeline facilities that have been involved in, or affected by, an accident. However, before exercising this authority, the Administrator, RSPA or the Associate Administrator, OPS shall make every effort to negotiate a mutually acceptable plan with the owner of those facilities and, where appropriate, the National Transportation Safety Board for performing the testing.

* * *

8. Section 190.205 is revised to read as follows:

§190.205 Warning letters.

Upon determining that a probable violation of 49 U.S.C. 60101 et seq. or any regulation or order issued thereunder has occurred, the Associate Administrator, OPS may issue a Warning Letter notifying the owner or operator of the probable violation and advising the operator to correct it or be subject to enforcement action under §§190.207 through 190.235.

9. Section 190.207 is amended by revising paragraphs (a) and (c) to read as follows:

§190.207 Notice of probable violation.

(a) Except as otherwise provided by this subpart, a Regional Director begins an enforcement proceeding by serving a notice of probable violation on a person charging that person with a probable violation of 49 U.S.C. 60101 et seq. or any regulation or order issued thereunder.

* * *

(c) The Associate Administrator, OPS may amend a notice of probable violation at any time prior to issuance of a final order under §190.213. If an amendment includes any new material allegations of fact or proposes an increased civil penalty amount or new or additional remedial action under §190.217, the respondent shall have the opportunity to respond under §190.209.

10. Section 190.209 is amended by revising the introductory text and paragraphs (c) and (d) to read as follows:

§190.209 Response options.

Within 30 days of receipt of a notice of probable violation the respondent shall respond to the Regional Director who issued the notice in the following way:

(c) An offer in compromise under paragraph (a) of this section is made by submitting a check or money order for the amount offered to the Regional Director who forwards the offer to the Associate Administrator, OPS for action. If the offer in compromise is accepted by the Associate Administrator, OPS the respondent is notified in writing that the acceptance is in full settlement of the civil penalty action. If an offer in compromise submitted under paragraph (a) of this section is rejected by the Associate Administrator, OPS it is returned to the respondent with written notification. Within 10 days of receipt of such notification, the respondent shall again respond to the Regional Director in one or more of the ways provided in paragraph (a) of this section.

(d) Failure of the respondent to respond in accordance with paragraph (a) of this section or, when applicable, paragraph (c) of this section, constitutes a waiver of the right to contest the allegations in the notice of probable violation and authorizes the Associate Administrator, OPS, without further notice to the respondent, to find facts to be as alleged in the notice of probable violation and to issue a final order under §190.213.

11. Section 190.211 is amended by revising paragraphs (a), (b), (d), and (j) to read as follows:

§190.211 Hearing.

(a) A request for a hearing provided for in this part must be accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations in the notice, the proposed corrective action (including a proposed amendment, a proposed compliance order, or a proposed hazardous facility order), or the proposed civil penalty amount. A respondent's failure to specify an issue may result in waiver of the respondent's right to raise that issue at the hearing. The respondent's request must also indicate whether or not the respondent will be represented by counsel at the hearing. (b) In such circumstances as deemed appropriate by the Regional Director, and only if the respondent concurs, a telephone conference may be held in lieu of a hearing.

(d) The hearing is conducted informally without strict adherence to rules of evidence. The respondent may submit any relevant information and material and call witnesses on the respondent's behalf. The respondent may also examine the evidence and witnesses presented by the government. No detailed record of a hearing is prepared.

(j) After submission of all materials during and after the hearing, the presiding official shall prepare a written recommendation as to final action in the case. This recommendation, along with any material submitted during and after the hearing, shall be included in the case file which is forwarded to the Associate Administrator, OPS for final administrative action.

12. Section 190.213 is amended by revising paragraph (a), (b)(4), (c), introductory text, and (e) to read as follows:

§190.213 Final order.

(a) After a hearing under §190.211 or, if no hearing has been held, after expiration of the 30 day response period prescribed in §190.209, the case file of an enforcement proceeding commenced under

§190.219 Consent order.

(a) At any time before the issuance of a compliance order under §190.213 the Associate Administrator, OPS and the respondent may agree to dispose of the case by joint execution of a consent order. Upon such joint execution, the consent order shall be considered a final order under §190.213.

* * * * *

16. Section 190.221 is revised to read as follows:

§190.221 Civil penalties generally.

When the Associate Administrator, OPS has reason to believe that a person has committed an act which is a violation of any provision of the 49 U.S.C. 60101 et seq. or any regulation or order issued thereunder, proceedings under §§ 190.207 through 190.213 may be conducted to determine the nature and extent of the violations and to assess and, if appropriate, compromise a civil penalty.

16a. Section 190.223 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§190.223 Maximum penalties.

(a) Any person who is determined to have violated a provision of 49 U.S.C. 60101 et seq. or any regulation or order issued thereunder, is subject to a civil penalty not to exceed \$10,000 for each violation for each day the violation continues except that the maximum civil penalty may not exceed \$500,000 for any related series of violations.

(b) Any person who knowingly violates a regulation or order under this subchapter applicable to offshore gas gathering lines issued under the authority of 49 U.S.C. 5101 et seq is liable for a civil penalty of not more than \$25,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense.

(c) Any person who is determined to have violated any standard or order under under 49 U.S.C. 60103 shall be subject to a civil penalty of not to exceed \$50,000, which penalty shall be in addition to any other penalties to which such person may be subject under paragraph (a) of this section.

* * * * *

17. Section 190.225, the introductory text, is revised to read as follows:

§190.225 Assessment considerations.

The Associate Administrator, OPS assesses a civil penalty under this part only after considering:

* * * * *

18. Section 190.227 is amended by revising paragraphs (c) and (d) to read as follows:

§190.227 Payment of penalty.

* * * * *

(c) Within 20 days after the respondent's receipt of a final order assessing a civil penalty issued

under §190.213, the respondent may offer to compromise the assessed penalty by submitting, in the manner required by paragraph (a) of this section, payment in the amount offered. The Chief Counsel or designee may accept or reject the compromise offer on behalf of the Associate Administrator, OPS. If it is accepted, the respondent is notified in writing that the acceptance is in full settlement of the civil penalty action. If the compromise offer is rejected it will be returned to the respondent with written notification. Within 20 days after the respondent's receipt of such notification, payment of the full amount of the civil penalty assessed in the final order becomes due. The provisions of paragraph (b) of this section regarding district court or Federal magistrate court action for penalty collection apply upon failure of the respondent to pay the assessed penalty within that time period.

(d) If the respondent elects to make an offer in compromise to a civil penalty proposed in a notice of probable violation issued under §190.207, the respondent shall do so in accord with the procedures of §190.209.

19. Section 190.229 is amended by revising paragraphs (a) through (d) to read as follows:

§190.229 Criminal penalties generally.

(a) Any person who willfully and knowingly violates a provision of 49 U.S.C. 60101 et seq. or any regulation or order issued thereunder shall upon conviction be subject for each offense to a fine of not more than \$25,000 and imprisonment for not more than five years, or both.

(b) Any person who willfully violates a regulation or order under this subchapter issued under the authority of 49 U.S.C. 5101 et seq. as applied to offshore gas gathering lines shall upon conviction be subject for each offense to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

(c) Any person who willfully and knowingly injures or destroys, or attempts to injure or destroy, any interstate transmission facility or any interstate pipeline facility (as those terms are defined in 49 U.S.C. 60101 et seq.) shall, upon conviction, be subject for each offense to a fine of not more than \$25,000, imprisonment for a term not to exceed 15 years, or both.

(d) Any person who willfully and knowingly defaces, damages, removes, destroys any pipeline sign, right-of-way marker, or marine buoy required by 49 U.S.C. 60101 et seq. or 49 U.S.C. 5101 et seq., or any regulation or order issued thereunder shall, upon conviction, be subject for each offense to a fine of not more than \$5,000, imprisonment for a term not to exceed 1 year, or both.

20. Section 190.231 is revised to read as follows:

§190.231 Referral for prosecution.

If an employee of the Research and Special Programs Administration becomes aware of any actual or possible activity subject to criminal penalties under §190.229, the employee reports it to the Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. The Chief Counsel refers the report to OPS for investigation. Upon completion of the investigation and if appropriate, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.

21. Section 190.233 is amended by revising paragraphs (a), (b), (c)(2), (c)(4), (d), (e) introductory text, (e)(5), (g) and (h) to read as follows:

§190.233 Hazardous facility orders.

(a) Except as provided by paragraph (b) of this section, if the Associate Administrator, OPS finds, after reasonable notice and opportunity for hearing in accord with paragraph (c) of this section, and §190.211(a), a particular pipeline facility to be hazardous to life or property, the Associate Administrator, OPS shall issue an order pursuant to this section requiring the owner or operator of the facility to take corrective action. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action, as appropriate.

(b) The Associate Administrator, OPS may waive the requirement for notice and hearing under paragraph (a) of this section before issuing an order pursuant to this section when the Associate Administrator, OPS determines that the failure to do so would result in the likelihood of serious harm to life or property. However, the Associate Administrator, OPS shall include in the order an opportunity for hearing as soon as practicable after issuance of the order. The provisions of paragraph (c)(2) of this section apply to an owner or operator's decision to exercise such an opportunity for hearing. The purpose of such a post-order hearing is for the Associate Administrator, OPS to determine whether the order should remain in effect or be rescinded or suspended in accord with paragraph (g) of this section.

(c) * * *

(2) An owner or operator elects to exercise his opportunity for a hearing under this section, by notifying the Associate Administrator, OPS of that election in writing within 10 days of service of the notice provided under paragraph (c)(1) of this section or, under paragraph (b) of this section when applicable. Absence of such written notification waives an owner or operator's opportunity for a hearing and allows the Associate Administrator, OPS to proceed to issue a "hazardous facility order" in accordance with paragraphs (d) through (h) of this section.

(4) Within 48 hours after conclusion of a hearing under this section, the Presiding Official shall submit a recommendation to the Associate Administrator, OPS as to whether or not a "hazardous facility order" is required. Upon receipt of the recommendation, the Associate Administrator, OPS shall proceed in accordance with paragraphs (d) through (h) of this section. If the Associate Administrator, OPS finds the facility to be hazardous to life or property the Associate Administrator, OPS shall issue an order in accordance with this section. If the Associate Administrator, OPS does not find the facility to be hazardous to life or property, the Associate Administrator, OPS shall dismiss the allegations contained in the notice, and promptly notify the owner or operator in writing by service as prescribed in §190.5.

(d) The Associate Administrator, OPS may find a pipeline facility to be hazardous under paragraph (a) of this section:

(1) If under the facts and circumstances the Associate Administrator, OPS determines the particular facility is hazardous to life or property; or

(2) If the pipeline facility or a component thereof has been constructed or operated with any equipment, material, or technique which the Associate Administrator, OPS determines is hazardous to life or property, unless the operator involved demonstrates to the satisfaction of the Associate Administrator, OPS that, under the particular facts and circumstances involved, such equipment, material, or technique is not hazardous to life or property.

(e) In making a determination under paragraph (d) of this section, the Associate Administrator, OPS shall consider, if relevant:

(5) Such other factors as the Associate Administrator, OPS may consider appropriate.

(g) The Associate Administrator, OPS shall rescind or suspend a hazardous facility order whenever the Associate Administrator, OPS determines that the facility is no longer hazardous to life or property. When appropriate, however, such a rescission or suspension may be accompanied by a notice

Transportation.
• • • • •

3. Section 191.19 is revised to read as follows.

§191.19 Report forms.

Copies of the prescribed report forms are available without charge upon request from the address given in §191.7. Additional copies in this prescribed format may be reproduced and used if in the same size and kind of paper. In addition, the information required by these forms may be submitted by any other means that is acceptable to the Administrator.

4. Section 191.25 is amended by revising paragraph (a) to read as follows:

§191.25 Filing safety-related condition reports.

(a) Each report of a safety-related condition under §191.23(a) must be filed (received by the Associate Administrator, OPS) in writing within five working days (not including Saturday, Sunday, or Federal Holidays) after the day a representative of the operator first determines that the condition exists, but not later than 10 working days after the day a representative of the operator discovers the condition. Separate conditions may be described in a single report if they are closely related. Reports may be transmitted by facsimile at (202) 366-7128.
• • • • •

PART 192--[AMENDED]

1. The authority citation for Part 192 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

2. Section 192.11 is amended by revising paragraph (b)(2) to read as follows:

§192.11 Petroleum gas systems.

• • • • •

(b) ***

(2) Below ground structures must have forced ventilation that will prevent any accumulation of gas.

• • • • •

3. Section 192.227 is amended by revising paragraph (b) introductory text, to read as follows:

§192.227 Qualification of welders.

• • • • •

(b) A welder may qualify to perform welding on pipe to be operated at a pressure that produces

a hoop stress of less than 20 percent of SMYS by performing an acceptable test weld, for the process to be used, under the test set forth in section I of appendix C to this part. A welder who makes welded service line connections to mains must also perform an acceptable test weld under section II of appendix C to this part as part of the qualifying test. After initial qualification, a welder may not perform welding unless:

• • • • •

4. Section 192.361 is amended by revising paragraph (f)(1) to read as follows:

§192.361 Service lines: Installation

• • • • •

(f) • • •

(1) It must be encased in a gas tight conduit.

• • • • •

5. Section 192.367 is amended by revising paragraph (a) to read as follows:

§192.367 Service lines: General requirements for connections to main piping.

(a) Location. Each service line connection to a main must be located at the top of the main or, if that is not practical, at the side of the main, unless a suitable protective device is installed to minimize the possibility of dust and moisture being carried from the main into the service line.

• • • • •

6. Section 192.511 is amended by revising paragraph (a) to read as follows:

§192.511 Test requirements for service lines.

(a) Each segment of a service line (other than plastic) must be leak tested in accordance with this section before being placed in service. If feasible, the service line connection to the main must be included in the test; if not feasible, it must be given a leakage test at the operating pressure when placed in service.

• • • • •

7. Section 192.603 is amended by revising paragraph (c) to read as follows:

§192.603 General provisions.

• • • • •

(c) The Administrator or the State Agency that has submitted a current certification under the pipeline safety laws, (49 U.S.C. 60101 et seq.) with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

9. Section 192.623, the heading, is revised to read as follows:

§192.623 Maximum and minimum allowable operating pressure; Low-pressure distribution systems.

PART 193--[AMENDED]

1. The authority citation for part 193 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53.

2. Section 193.2001 is amended by revising paragraph (a) to read as follows:

§193.2001 Scope of part.

(a) This part prescribes safety standards for LNG facilities used in the transportation of gas by pipeline that is subject to the pipeline safety laws (49 U.S.C. 60101 et seq.) and Part 192 of this chapter.

3. Section 193.2007 is amended by revising the definition of Administrator and the definition of g to read as follows:

§193.2007 Definitions.

Administrator means the Administrator of the Research and Special Programs Administration or any person to whom authority in the matter concerned has been delegated by the Secretary of Transportation.

g means the standard acceleration of gravity of 9.806 meters per second² (32.17 feet per second²).

4. Section 193.2017 is amended by revising paragraph (a) to read as follows:

§193.2017 Plans and procedures.

(a) Each operator shall maintain at each LNG plant the plans and procedures required for that plant by this part. The plans and procedures must be available upon request for review and inspection by the Administrator or any State Agency that has submitted a current certification or agreement with respect to the plant under the pipeline safety laws (49 U.S.C. 60101 et seq.). In addition, each change to the plans or procedures must be available at the LNG plant for review and inspection within 20 days after the change is made.

5. Section 193.2321 is amended by revising paragraph (a) to read as follows:

§193.2321 Nondestructive tests.

(a) The following percentages of each day's circumferentially welded pipe joints for hazardous fluid piping, selected at random, must be nondestructively tested over the entire circumference to indicate any defects which could adversely affect the integrity of the weld or pipe:

Weld type	Cryogenic piping	Other	Test method
Butt welds more than 2 inches in nominal size.	100	30	Radiographic or ultrasonic.
Butt welds 2 inches or less in nominal size.	100	30	Radiographic, ultrasonic, liquid penetrant or magnetic particle.
Fillet and socket welds	100	30	Liquid penetrant or magnetic particle.
* * *			

6. Section 193.2515 is amended by revising paragraph (c) to read as follows.

§193.2515 Investigation of failures.

* * *

(c) If the Administrator or relevant state agency under the pipeline safety laws (49 U.S.C. 60101 et seq.) investigates an incident, the operator involved shall make available all relevant information and provide reasonable assistance in conducting the investigation. Unless necessary to restore or maintain service, or for safety, no component involved in the incident may be moved from its location or otherwise altered until the investigation is complete or the investigating agency otherwise provides. Where components must be moved for operational or safety reasons, they must not be removed from the plant site and must be maintained intact to the extent practicable until the investigation is complete or the investigating agency otherwise provides.

PART 195—[AMENDED]

1. The authority citation for part 195 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Section 195.58 is revised to read as follows:

§195.58 Address for written reports.

Each written report required by this subpart must be made to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 2335, 400 Seventh Street SW., Washington DC 20590. However, accident reports for intrastate pipelines subject to the jurisdiction of a State agency pursuant to a certification under the pipeline safety laws (49 U.S.C. 60101 et seq.) may be submitted in duplicate to that State agency if the regulations of that agency require submission of these reports and provide for further transmittal of one

5. Section 198.35 is revised to read as follows.

§198.35 Grants conditioned on adoption of one-call damage prevention program.

In allocating grants to State agencies under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) and under section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2004), the Secretary considers whether a State has adopted or is seeking to adopt a one-call damage prevention program in accordance with §198.37. If a State has not adopted or is not seeking to adopt such program, the State agency may not receive the full reimbursement to which it would otherwise be entitled. 6. Section 198.37 is amended by revising paragraphs (e) and (h) to read as follows:

§198.37 State one-call damage prevention program.

* * * * *

(e) Except with respect to interstate transmission facilities as defined in the pipeline safety laws (49 U.S.C. 60101 et seq.), operators of underground pipeline facilities must be required to participate in the one-call notification systems that cover the areas of the State in which those pipeline facilities are located.

* * * * *

(h) Operators of underground pipeline facilities (other than operators of interstate transmission facilities as defined in the pipeline safety laws (49 U.S.C. 60101 et seq.), and interstate pipelines as defined in §195.2 of this chapter), excavators and persons who operate one-call notification systems who violate the applicable requirements of this subpart must be subject to civil penalties and injunctive relief that are substantially the same as are provided under the pipeline safety laws (49 U.S.C. 60101 et seq.).

PART 199—[AMENDED]

1. The authority citation for part 199 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Section 199.3 is amended by revising the definition for Administrator and the definition for State agency to read as follows:

§199.3 Definitions.

* * * * *

Administrator means the Administrator of the Research and Special Programs Administration or any person to whom authority in the matter concerned has been delegated by the Secretary of Transportation.

* * * * *

State agency means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 et seq.).

3. Section 199.7 is amended by revising paragraph (b) to read as follows:

§199.7 Anti-drug plan.

* * * * *

(b) The Administrator or the State Agency that has submitted a current certification under the pipeline safety laws (49 U.S.C. 60101 et seq.) with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

§199.205 [Amended]

4. Section 199.205 is amended by revising the definition for State agency to read as follows:

* * * * *

State agency means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 et seq.).

* * * * *

Issued in Washington, DC, on March 28, 1996.

Rose A. McMurray, Acting Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 96-10282 Filed 4-25-96; 8:45 am]

BILLING CODE 4910-60-P

EFFECTIVE DATE: This rule is effective July 17, 1996.

FOR FURTHER INFORMATION CONTACT: Jim Swart, Program Analyst, Office of Drug Enforcement and Program Compliance, Room 10317 (202-366-3784); or Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Room 10424, (202-366-9306); 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Transportation Employees Testing Act of 1991 required that an opportunity for treatment be made available to covered employees. To implement this requirement in its alcohol and drug testing rules issued in February 1994, the Department of Transportation established the role of the "substance abuse professional" (SAP). The DOT rules require an employer to advise a covered employee, who engages in conduct prohibited under these rules, of the resources available for evaluation and treatment of substance abuse problems, including the names, addresses, and telephone numbers of SAPs and counseling and treatment programs. The rules also provide for SAP evaluation to identify the assistance needed by employees with substance abuse problems. In many cases (e.g., the Federal Highway Administration and Federal Transit Administration rules), this process and the role of the SAP apply to drug testing as well as alcohol testing.

The primary safety objective of the DOT rules is to prevent, through deterrence and detection, alcohol and controlled substance users from performing transportation safety-sensitive functions. The SAP is responsible for several duties important to the evaluation, referral, and treatment of employees identified through breath and urinalysis testing as being positive for alcohol and/or controlled substance use, or who refuse to be tested, or who have violated other provisions of the DOT rules.

The SAP's fundamental responsibility is to provide a comprehensive face-to-face assessment and clinical evaluation to determine if the employee needs assistance resolving problems associated with alcohol use or prohibited drug use. If the employee is found to need assistance as a result of this evaluation, the SAP recommends a course of treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty. Assistance recommendations can include, but are not limited to: In-patient treatment, partial in-patient treatment, out-patient treatment, education programs, and aftercare. Upon the determination of the best recommendation for assistance, the SAP will serve as a referral source to assist the employee's entry into an acceptable treatment or education program.

In general, the DOT rules prohibit a covered employee who has engaged in conduct prohibited by the rules from performing any safety-sensitive functions until meeting the conditions for returning to work, which include a SAP evaluation, demonstration of successful compliance with any required assistance program, and a successful return-to-duty test result (below 0.02 for alcohol test and/or a negative drug test). Therefore, the SAP follow-up evaluation is needed to determine if the employee demonstrates successful compliance with the original treatment recommendation. In addition, the SAP directs the employee's follow-up testing program.

The DOT rules define the SAP to be a licensed physician (Medical Doctor or Doctor of Osteopathy), a licensed or certified psychologist, a licensed or certified social worker, or a licensed or certified employee assistance professional. In addition, alcohol and drug abuse counselors certified by the National Association of Alcoholism and Drug Abuse Counselors (NAADAC) Certification Commission, a national organization that imposes qualification standards for treatment of alcohol and drug related disorders, are included in the SAP definition. All must have knowledge of and clinical experience in the diagnosis and treatment of substance abuse-related disorders (the degrees and

certificates alone do not confer this knowledge). The rules do not authorize individuals to be SAPs who meet only state certification criteria because qualifications vary greatly by state. In some states, certified counselors do not have the experience or training deemed necessary to implement the objectives of the rules. State-certified addiction counselors could have, of course, taken the NAADAC competency examination to receive certification.

The issue of who should be regarded as qualified to be a SAP was one of the most commented-upon issues in the rulemaking leading to the February 1994 rules (see 59 FR 7334-36; February 15, 1994). In the time since these rules were issued, various parties have continued to request that they be included within the definition of SAPs. In evaluating how to respond to such requests, the Department has taken the view that any expansion of the definition of SAPs should ensure that the qualifications of persons playing this important role not be diluted.

The International Certification Reciprocity Consortium (ICRC)/Alcohol & Other Drug Abuse (Suite 213, 3725 National Drive, Raleigh, North Carolina 27612), petitioned the DOT for inclusion of its certified counselors in the SAP definition. Upon receipt of the petition, the DOT began a thorough evaluation of the ICRC proposal, including information from ICRC related to counselor eligibility criteria, quality assurance procedures, codes of ethics, and certification and testing parameters. We also reviewed ICRC information on testing procedures, examination availability, and psychometrician standards.

The results of our evaluation supported the conclusion that ICRC has rigorous standards in place and that their counselors warrant inclusion in the Department's SAP definition. Their program requirements for professional counselors and their testing and certification procedures (as well as test availability) are consistent with those of other groups already defined as qualified for participation. After careful review and evaluation of the ICRC petition, supporting documentation, and testing methodology the DOT proposed including ICRC certified counselors in its SAP definition. ICRC-certified counselors must meet examination, experience, and other standards comparable to NAADAC-certified counselors, who are included in the existing SAP definition.

At the same time, the Department proposed consolidating SAP-related matters into Part 40, its Department-wide procedural regulation. Under the NPRM, the Department proposed to place the revised definition of SAP-including ICRC-certified counselors-in part 40, while removing the SAP definitions in each of the operating administration rules.

Comments and DOT Responses

Twenty-eight comments addressed the inclusion of ICRC-certified counselors in the SAP definition. No one opposed the proposed amendment. For the reasons noted above, the Department will include ICRC counselors in the definition.

Three comments suggested that additional professions or certifications be recognized in the SAP definition. Further additions to the definition are beyond the scope of this rulemaking. However, representatives of any group or profession seeking inclusion may contact the individuals listed above in "For Further Information Contact" to discuss the process for considering such requests.

One comment asked for further clarification of the operational role of the SAP, with respect to such matters as referral for treatment, the return to duty process, and follow-up testing. The Department has issued guidance in these areas and, if needed, can issue additional guidance in the future. In our view, further elaboration of the regulatory text in these areas is not necessary.

One comment, from a trade association, suggested that the definition of SAP remain in the regulation for the operating administration that regulates its members, rather than being consolidated in 49 CFR part 40. The rationale for this suggestion appears to be that employers would prefer to find all relevant terms in one rule-the operating administration rule-rather than needing to be familiar with both

professional" is added, to read as follows.

§40.3 Definitions.

* * * * *

Substance abuse professional. A licensed physician (Medical Doctor or Doctor of Osteopathy); or a licensed or certified psychologist, social worker, or employee assistance professional, or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse). All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

Issued this 9th day of July, 1996, at Washington, DC.

Federico Peña,
Secretary of Transportation.

Federal Aviation Administration

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Air transportation, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

For the reasons set out in the preamble, the Federal Aviation Administration amends 14 CFR part 121, as follows:

PART 121-OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 46105

Appendix I [Amended]

2. In Appendix I, Sec. II, the definition of "Substance abuse professional" is removed

Appendix J [Amended]

3. In Appendix J, Sec. I, subsection C, the definition of "Substance abuse professional" is removed.

Issued in Washington, DC on May 13, 1996.

David R. Hinson,
Administrator, Federal Aviation Administration.

Research and Special Programs Administration

List of Subjects in 49 CFR Part 199

Alcohol testing, Drug testing, Pipeline safety, Recordkeeping and reporting.

For the reasons stated in the preamble, RSPA amends 49 CFR part 199 as follows:

PART 199-DRUG AND ALCOHOL TESTING

1. The authority for Part 199 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, and 60108; 49 CFR 1.53.

§199.205 [Amended]

2. In 49 CFR 199.205, the definition of "Substance abuse professional" is removed.

Issued in Washington, DC on June 11, 1996.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

Federal Railroad Administration

List of Subjects in 49 CFR Part 219

Alcohol and drug abuse, Railroad safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FRA amends 49 CFR part 219, as follows:

PART 219-CONTROL OF ALCOHOL AND DRUG USE

1. The authority for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20113, 20140, 21301, 21304, Pub. L. 103-272 (July 5, 1994); and 49 CFR 1.49(m).

§219.5 [Amended]

2. In §219.5, the definition of "Substance abuse professional" is removed.

Issued in Washington, DC on July 9, 1996.

Donald M. Itzkoff,

Deputy Administrator, Federal Railroad Administration.

Federal Highway Administration

List of Subjects in 49 CFR Part 382

Alcohol and drug abuse, Highway safety, Reporting and recordkeeping requirements

For the reasons stated in the preamble, the FHWA amends 49 CFR part 382, as follows:

PART 382-CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

1. The authority for part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 et seq., 31502; and 49 CFR 1.48.

2. In §382.107, the definition of "Substance abuse professional" is removed.

Issued in Washington, DC on July 9, 1996.

Rodney E. Slater,
Administrator, Federal Highway Administration.

Federal Transit Administration

List of Subjects

49 CFR Part 653

Drug testing, Grant programs-transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 654

Alcohol testing, Grant programs-transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set out in the preamble, the Federal Transit Administration amends 49 CFR parts 653 and 654, as follows:

PART 653-PREVENTION OF PROHIBITED DRUG USE IN TRANSIT OPERATIONS

1. The authority for part 653 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

§653.7 [Amended]

2. In §653.7, the definition of "Substance abuse professional" is removed.

PART 654-PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

1. The authority for part 654 continues to read as follows.

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

§654.7 [Amended]

2. In §654.7, the definition of "Substance abuse professional" is removed.

Issued in Washington, DC on July 9, 1996.

Gordon J. Linton,
Administrator, Federal Transit Administration.

[FR Doc. 96-18064 Filed 7-16-96; 8:45 am]

BILLING CODE 4910-62-P

Program Analyst, Research and Special Programs Administration, Office of Pipeline Safety, Room 2335, 400 Seventh Street, SW, Washington, DC 20390. Telephone: (202)368-6199. Fax: (202)368-4566. e-mail: catrina.pavlik@RSPA.dot.gov

SUPPLEMENTARY INFORMATION:

Background

In accordance with 49 U.S.C. 60601 of the pipeline safety law, RSPA administers drug testing regulations for pipeline operators.

On August 20, 1997, RSPA published in the Federal Register (62 FR 44250, Docket No. PS-128, Amendment 15) a notice of proposed rulemaking to modify current procedures in its drug testing regulations governing situations in which pipeline employees test positive on a drug test. Because similar requirements are found in the drug testing regulations of the other modal administrations, and in RSPA's alcohol testing regulations, RSPA proposed to make the procedures and policy in those regulations applicable to pipeline operators under the drug testing regulations. RSPA proposed to require pipeline operators to utilize a substance abuse professional (SAP) to evaluate pipeline employees who have either received a positive drug test or have refused a drug test required by RSPA. In addition, the SAP could require an employee to complete a rehabilitation program before being eligible to return to duty, if needed. RSPA also proposed to revise the word "employee" to "covered employee" and to add the definition for "covered function." Comments to the notice of proposed rulemaking were due on or before October 20, 1997.

Comments Received

RSPA received 10 comments: 6 from pipeline operators, 1 from a trade association and 3 from consortia. The comments fell within the following general categories: (1) Review of Drug Testing Results; (2) Drug Test Required—Return to Duty Testing; (3) SAP Determines Follow-up Testing; (4) Qualification for a SAP; and (5) Other Comments. The comments are addressed based on those categories.

1. Review of Drug Testing Results

The notice of proposed rulemaking proposed that if the Medical Review Officer (MRO) determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result, other than the unauthorized use of prohibited drugs, the MRO shall verify the test result as positive if unauthorized use is

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

(RSPA Docket PS-128; Amendment 198-18)

RN 2137-ACBA

Drug and Alcohol Testing; Substance Abuse Professional Evaluation for Drug Use

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: In this final rule, the Research and Special Programs Administration (RSPA) modifies current procedures in its drug testing regulations by requiring a face-to-face evaluation by substance abuse professionals (SAP) for pipeline employees who have either received a positive drug test or have refused a drug test required by RSPA. In addition, the SAP could require a pipeline employee to complete a rehabilitation program before being eligible to return to duty. Similar requirements are included in the drug testing regulations of the other modal administrations. Adding these requirements will ensure conformity among the modal administrations which will assist with the overall management of RSPA's drug testing regulations.

DATES: This rule is effective April 15, 1998.

FOR FURTHER INFORMATION CONTACT: Catrina M. Pavlik, Drug Alcohol

will issue a subsequent notice in the Federal Register by March 16, 1998 to confirm that fact and reiterate the effective date. If an adverse comment is received, RSPA will issue a timely notice in the Federal Register to confirm that fact, and RSPA may withdraw the direct final rule in whole or in part. RSPA may then incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 6421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Please identify the docket and amendment number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 6421 between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Catrina Pavlik, Drug/Alcohol Program Analyst, Research and Special Programs Administration, Office of Pipeline Safety, Room 2335, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366-6199, Fax: (202) 366-4366, e-mail: catrina.pavlik@RSPA.dot.gov. Information is also available on the Office of Pipeline Safety's internet home page at OPS.dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1988, RSPA, along with other operating administrations of the Department of Transportation, adopted regulations requiring pre-employment, post-accident, reasonable cause, and random drug testing (53 FR 47084).

The drug testing required by these rules applies to some persons located outside of the United States. However, the rule provided that drug testing would not apply to any person for whom compliance would violate the domestic laws or policies of another country. The rule provided that 49 CFR part 199 would not be effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of the rule raises questions of compatibility with the country's laws or policies.

At the same time, RSPA stated that the Department of Transportation and other elements of the U.S. Government would enter into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. If as a result of those discussions an amendment to the rules

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS-102; Amendment 199-16]

RIN 2137-AC67

Control of Drug Use and Alcohol Misuse in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Direct final rule.

SUMMARY: This direct final rule amends the "Scope and Compliance" section of the Drug Testing Rules to revise the applicability requirement with respect to any operator whose employees are located outside the territory of the United States.

DATES: This direct final rule is effective on April 15, 1998. If RSPA does not receive any adverse comment or notice of intent to file an adverse comment by February 23, 1998, the rule will become effective on the date specified. RSPA

DEPARTMENT OF TRANSPORTATION

Research and Economic Programs
Administration

49 CFR Part 199

[Document No. PB-100, Amendment 100-10]

RIN 2137-AC07

**Control of Drug Use and Alcohol
Misuse in Natural Gas, Liquid
Natural Gas, and Hazardous Liquid
Pipeline Operations****SUBJECT:** Research and Special Programs
Administration (RSPA), DOT.**ACTION:** Confirmation of effective date of
direct final rule.

SUMMARY: This document confirms the effective date of the direct final rule that amends the "Scope and Compliance" section of the Drug Testing Rules to revise the applicability requirement with respect to any operator whose employees are located outside the territory of the United States.

DATES: This document confirms April 15, 1998, as the effective date of the direct final rule published on December 24, 1997.

FOR FURTHER INFORMATION CONTACT:

Caitrina Pavitt, Drug/Alcohol Program Analyst, Research and Special Programs Administration, Office of Pipeline Safety, Room 2335, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366-6199, Fax: (202) 366-4566, e-mail: caitrina.pavitt@RSPA.dot.gov. Information is also available on the Office of Pipeline Safety's Internet home page at OP5.dot.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

On December 24, 1997, RSPA published a direct final rule (62 FR 67293), titled "Control of Drug Use and Alcohol Misuse in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations." In that publication, RSPA stated that if it did not receive adverse comments by February 23, 1998, it would publish a confirmation notice in the Federal Register by March 16, 1998. RSPA received no adverse comments. Therefore, this document confirms that the direct final rule cited above will become effective on April 15, 1998.

Issued in Washington, D.C. on March 16, 1998.

Richard B. Yelver,

Associate Administrator for Pipeline Safety.

[FR Doc. 98-7556 Filed 3-23-98; 6:45 am]
BILLING CODE 4910-60-9

Number 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays when the facility is closed.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366-0918, or by e-mail: eben.wyman@rspa.dot.gov, regarding the subject matter of this Notice; or the Dockets Unit, (202) 366-4451, for copies of this final rule or other material in the docket. Further information can be obtained by accessing OPS' Internet Home Page at: ops.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

In a March 1995 memorandum, President Clinton directed Federal regulatory agencies to, among other things, conduct a page-by-page review of all agency regulations, cutting or revising those that were obsolete, intrusive, or better handled by parties other than the Federal government (i.e., private business, State, or local government).

In response to the President's directive, RSPA issued a final rule on May 24, 1996 (61 FR 26121) that updated references to voluntary specifications and standards. This rulemaking is the second annual update of the pipeline safety regulations to reduce unnecessary burdens on the regulated community and to ensure that the pipeline safety regulations incorporate the most current technical standards and specifications.

Incorporation by Reference

RSPA is incorporating by reference all or portions of nine updated documents containing practices, codes, standards, and specifications developed and published by technical organizations, including the American Society of Mechanical Engineers, American Society for Testing and Materials, Manufacturers Standardization Society of the Valve and Fittings Industry, and National Fire Protection Association. The updated standards incorporate the latest technology and engineering practice. Adoption of these updated documents assures that pipeline operators will not be unnecessarily burdened with outdated materials, design, and construction requirements.

These documents can be obtained by contacting the following organizations:

1. American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.
2. The American Society of Mechanical Engineers (ASME), United Engineering Center, 345 East 47th Street, New York, NY 10017.
3. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS), 127 Park Street, NW, Vienna, VA 22180.
4. National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

These documents are available for inspection at the following locations:

1. Office of Pipeline Safety, room 2335, U.S. Department of Transportation, 400 7th Street, SW, Washington, DC 20590.
2. Office of the Federal Register, 800 N. Capitol Street, NW, Suite 700, Washington, DC 20408.

Other revisions

Clarifications

This document amends the following pipeline safety regulations to clarify their meaning:

1. Section 192.16(b)(5) states that The operator (if applicable),

plumbers,

(Page 77221)

and heating contractors can assist in locating, inspecting, and repairing the customer's buried piping." This final rule clarifies the reference by deleting the term "plumbers" and inserting the phrase "plumbing contractors".

2. Section 192.614(b)(5) requires operators to "Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins." This requirement can be confusing to the operator in terms of interpreting the meaning of "as far as practical." Therefore, this final rule amends this paragraph to require temporary marking of buried pipelines before excavation activities begin "except in emergency situations."

3. Section 195.56(a) describes safety-related condition reports "under Sec. 191.55(a) . . .", which is inaccurate. Safety-related condition report requirements for Part 195 are contained in Sec. 195.55(a). This final rule makes that clarification.

4. The last line of Sec. 199.17(a) provides that "samples may be discarded following the end of the 365-period." This final rule clarifies that samples may be discarded following the end of the "365-day period." Also, this final rule revises the language containing the term "his representative," on line 8, to remove the specific reference to gender.

Grammatical Corrections

In various sections of the pipeline safety regulations, minor grammatical errors exist that need correction, and gender-specific language that need revision. The following are the grammatical corrections covered in this rulemaking:

1. Sec. 190.7(a)--addition of a comma after the term "RSPA", on line 5, and revision of the language containing the term "him," on line 8, to remove the specific reference to gender.
2. Sec. 190.203(a)--addition of a comma after the term "OPS", on line 3.
3. Sec. 190.209--addition of a comma after the term "violation", on line 2.
4. Sec. 192.107(b)(2)--addition of a comma after the term "section", on line 3.
5. Sec. 193.2059(d)(1)(i)--deletion of the comma after the term "out" and the addition of a comma after the term "system" on line 8.

Updates

In Sec. 191.21 of the pipeline safety regulations, an authorization date follows the Office of Management and Budget (OMB) Control Number. Although the OMB number is still current, this notice removes the unnecessary authorization date. This section is amended to read as follows:

1. Sec. 191.21--the chart provided in this section is amended to remove the reference to the March 31, 1986, as the final date of approval for this OMB Control Number. This number is still current and there is no date limiting its authority.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not reviewed by the Office of Management and Budget (OMB). The final

Authority: 33 U.S.C. 1321; 49 U.S.C. 5101-5117, 60101 et seq.; and 49 CFR 1.53.

2. Paragraph (a) of Sec. 190.7 is revised to read as follows:

Sec. 190.7 Subpoenas; witness fees.

(a) The Administrator, RSPA, the Chief Counsel, RSPA, or the official designated by the Administrator, RSPA, to preside over a hearing convened in accordance with this part, may sign and issue subpoenas individually on their own initiative or, upon request and adequate showing by any person participating in the proceeding that the information sought will materially advance the proceeding.

3. Paragraph (a) of Sec. 190.203 is revised to read as follows:

Sec. 190.203 Inspections.

(a) Officers, employees, or agents authorized by the Associate Administrator for Pipeline Safety, RSPA, upon presenting appropriate credentials, are authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties are relevant to determining the compliance of such persons with the requirements of 49 U.S.C. 60101 et seq., or regulations or orders issued thereunder.

4. The introductory text of Sec. 190.209 is revised to read as follows:

Sec. 190.209 Response options.

Within 30 days of receipt of a notice of probable violation, the respondent shall respond to the Regional Director who issued the notice in the following way:

PART 191--[AMENDED]

1. The authority citation for Part 191 continues to read as follows:

[[Page 7723]]

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60119, and 60124; and 49 CFR 1.53.

Sec. 191.21 [Amended]

2. The heading of the chart in Sec. 191.21 is amended to remove the phrase "APPROVED THROUGH MARCH 31, 1986."

PART 192--[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53.

2. Paragraph (b)(5) of Sec. 192.16 is revised to read as follows:

Sec. 192.16 Customer notification.

.....

(b) * * *

(5) The operator (if applicable), plumbing contractors, and heating contractors can assist in locating, inspecting, and repairing the customer's buried piping.

.....

3. Paragraph (b)(2) of Sec. 192.107 is revised to read as follows:

Sec. 192.107 Yield strength (S) for steel pipe.

.....

(b) * * *

(2) If the pipe is not tensile tested as provided in paragraph (b)(1) of this section, 24,000 p.s.i.

4. Paragraph (c)(5) of Sec. 192.614 is revised to read as follows:

Sec. 192.614 Damage prevention program.

.....

(c) * * *

(5) Provide for temporary marking of buried pipelines in the area of excavation activity before the activity begins, except in emergency situations.

.....

5. Appendix A of part 192 is amended by revising paragraphs II. C (1), (2), (9) and (10), II. E (1) and II. F (1) to read as follows:

Appendix A To Part 192--Incorporated by Reference

II. Documents incorporated by reference. (Numbers in parentheses indicate applicable editions.)

.....

C. * * *

(1) ASTM Designation: A 53 "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless" (A53-96).

(2) ASTM Designation A 106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A106-95).

.....

(9) ASTM Designation D638 "Standard Test Method for Tensile Properties of Plastics" (D638-96).

(10) ASTM Designation D2513 "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing and Fittings" (D2513-96a).

.....

E. * * *

(1) MSS SP44-96 "Steel Pipe Line Flanges" (includes 1996 errata) (1996).

.....

F. * * *

(1) NFPA 30 "Flammable and Combustible Liquids Code" (1996).

.....

PART 193--[AMENDED]

1. The authority citation for Part 193 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109,

60101, 60113, 60118; and 49 CFR 1.53

2. Paragraph (d)(1)(i) of Sec. 193.2059 is revised to read as follows:

Sec. 193.2059 Flammable vapor-gas dispersion protection.

* * * * *

(d) * * *

(1) * * *

(i) The rate of vaporization is not less than the sum of flash vaporization and vaporization from boiling by heat transfer from contact surfaces during the time necessary for spill detection, instrument response, and automatic shutdown by the emergency shutdown system, but not less than 10 minutes, plus, in the case of impounding systems for LNG storage tanks with side or bottom penetrations, the time necessary for the liquid level in the tank to reach the level of the penetration or equilibrate with the liquid impounded assuming failure of the internal shutoff valve.

* * * * *

3. Appendix A to Part 193 is amended by revising paragraphs II.E(1), II.G(1), to read as follows:

Appendix A To Part 193--Incorporation By Reference

* * * * *

II. Documents Incorporated by Reference. (Numbers in Parentheses Indicate Applicable Editions.)

* * * * *

E. * * *

1. ASME/ANSI B31.3 "Process Piping" (1996)--Includes 1996 Addenda.

* * * * *

G. * * *

1. NFPA 30 "Flammable and Combustible Liquids Code" (1996)

* * * * *

PART 195--[AMENDED]

1. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Section 195.3 is amended by revising paragraph (c)(5)(i) and (ii) to read as follows:

Sec. 195.3 Matter incorporated by reference.

* * * * *

(c) * * *

(5) * * *

(i) ASTM Designation A 53 "Standard specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless" (A 53-96).

(ii) ASTM Designation: A 106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A 106-95).

* * * * *

3. Paragraph (a) of Sec. 195.56 is revised to read as follows:

Sec. 195.56 Filing safety-related condition reports.

a) Each report of a safety-related condition under Sec. 199.15 a must be filed (received by the Administrator) in writing within 5 working days (not including Saturdays, Sundays, or Federal holidays) after the day a representative of the operator first determines that the condition exists, but not later than 10 working days after the day a representative of the operator discovers the condition. Separate conditions may be described in a single report if they are closely related. To file a report by facsimile (fax), dial (202) 366-7128.
.....

PART 199--[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 46 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Paragraph (a) of Sec. 199.17 is revised to read as follows:

Sec. 199.17 Retention of samples and retesting.

(a) Samples that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days as required by the DOT Procedures. Within this 365-day period, the employee or the employee's representative, the operator, the Administrator, or, if the operator is subject to the jurisdiction of a state agency, the state agency may request that the laboratory retain the sample for

[[Page 7724]]

an additional period. If, within the 365-day period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request, the sample may be discarded following the end of the 365-day period.
.....

Issued in Washington, DC on January 27, 1998.
Kelley S. Coyner,
Acting Administrator.
[FR Doc. 98-2898 Filed 2-13-98; 8:45 am]
BILLING CODE 4910-60-P

EQUATION 1

The Omnibus Transportation Employees Testing Act of 1991 requires that an opportunity for treatment be made available to covered employees. To implement this requirement in its alcohol and drug testing rules issued in February 1994, the Department of Transportation established the role of the "substance abuse professional" (SAP). The DOT rules require an employer to advise a covered employee, who engages in conduct prohibited under these rules, of the resources available for evaluation and treatment of substance abuse problems, including the names, addresses, and telephone numbers of SAPs and counseling and treatment programs. The rules also provide for SAP evaluation to identify the assistance needed by employees with substance abuse problems. In many cases (e.g., the Federal Highway Administration and Federal Transit Administration rules), this process and the role of the SAP apply to drug testing as well as alcohol testing.

The primary safety objective of the DOT rules is to prevent, through deterrence and detection, alcohol and controlled substance users from performing transportation safety-sensitive functions. The SAP is responsible for several duties important to the evaluation, referral, and treatment of employees identified through breath and urinalysis testing as being positive for alcohol and/or controlled substance use, or who refuse to be tested, or who have violated other provisions of the DOT rules.

The SAP's fundamental responsibility is to provide a comprehensive face-to-face assessment and clinical evaluation to determine if the employee needs assistance resolving problems associated with alcohol use or prohibited drug use. If the employee is found to need assistance as a result of this evaluation, the SAP recommends a course of treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty. Assistance recommendations can include, but are not limited to: In-patient treatment, partial in-patient treatment, out-patient treatment, education programs, and aftercare. Upon the determination of the best recommendation for assistance, the SAP will serve as a referral source to assist the employee's entry into an acceptable treatment or education program.

In general, the DOT rules prohibit a covered employee who has engaged in conduct prohibited by the rules from performing any safety-sensitive functions until meeting the conditions for returning to work, which include a SAP evaluation, demonstration of successful compliance with any required assistance program, and a successful return-to-duty test result (below 0.02 for alcohol test and/or a negative drug test). Therefore, the SAP follow-up evaluation is needed to determine if the employee demonstrates successful compliance with the original treatment recommendation. In addition, the SAP directs the employee's follow-up testing program.

The DOT rules define the SAP to be a licensed physician (Medical Doctor or Doctor of Osteopathy), a licensed or certified psychologist, a licensed or certified social worker, or a licensed or certified employee assistance professional. In-addition, alcohol and drug abuse counselors certified by the National Association of Alcoholism and Drug Abuse Counselors (NAADAC) Certification Commission, a national organization that imposes qualification standards for treatment of alcohol and drug related disorders, are included in the SAP definition. All must have knowledge of and clinical experience in the diagnosis and treatment of substance abuse-related disorders (the degrees and certificates alone do not confer this knowledge). The rules do not authorize individuals to be SAPs who meet only state certification criteria because qualifications vary greatly by state. In some states, certified counselors do not have the experience or training deemed

It is appropriate to have a single, common definition of SAP in part 40. The Department has considered the various definitions of SAP in the existing rules and has determined that a single, common definition is appropriate. The Department has adopted a definition of SAP in part 40 that is consistent with the definition of SAP in the DOT-wide, common definition of SAP in part 40. Having a DOT-wide, common definition of SAP in part 40 is no more remarkable or difficult for employers to grasp than having the existing common definitions of Medical Review Officer or Breath Alcohol Technician in part 40. The ease of reference to common terms affecting the drug and alcohol testing process found in a single place, particularly for the many multi-modal employers covered by the Department's rules, is a significant reason for adopting the proposed consolidation. Moreover, it is much quicker to amend one rule than to amend six, an important consideration when the SAP definition is potentially subject to additional amendments if additional professions or certifications are included. The Department is adopting the proposed consolidation.

Regulatory Process Matters

The final rule is considered to be a nonsignificant rulemaking under DOT Regulatory Policies and Procedures, 44 FR 11034. It also is a nonsignificant rule for purposes of Executive Order 12866. The Department certifies, under the Regulatory Flexibility Act, that the NPRM, if adopted, would not have a significant economic effect on a substantial number of small entities. The NPRM would not impose any costs or burdens on regulated entities, serving merely to broaden the definition of service providers under the rule. The rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Department finds good cause to make this final rule effective immediately. There are a substantial number of ICRC-certified counselors who are ready and waiting to participate as SAPs in the DOT drug and alcohol testing program, and there is no opposition to their beginning to participate. The interest of the DOT program, the counselors themselves, and the employers who will be able to make use of them is served by making this rule change effective as soon as possible. In addition, this rule can be viewed as relieving a restriction on the participation of ICRC-counselors in the program.

Office of the Secretary

List of Subjects in 49 CFR Part 40

Drug testing, Alcohol testing, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, 49 CFR part 40 is amended as follows:

PART 40--[AMENDED]

1. The authority citation for part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322; 49 U.S.C. app. 1301int., app. 1434int., app. 2717, app. 1618a.

2. In Sec. 40.3, after the definition of "specimen bottle," a definition of "substance abuse professional" is added, to read as follows:

Sec. 199.205 (Amended)

2. In 49 CFR 199.205, the definition of "Substance abuse professional" is removed.

Issued in Washington, DC on June 11, 1996.
D.K. Sharma,
Administrator, Research and Special Programs Administration.

Federal Railroad Administration

List of Subjects in 49 CFR Part 219

Alcohol and drug abuse, Railroad safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FRA amends 49 CFR part 219, as follows:

PART 219--CONTROL OF ALCOHOL AND DRUG USE

1. The authority for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20113, 20140, 21301, 21304; Pub. L. 103-272 (July 5, 1994); and 49 CFR 1.49(m).

Sec. 219.5 (Amended)

2. In Sec. 219.5, the definition of "Substance abuse professional" is removed.

Issued in Washington, DC on July 9, 1996.
Donald M. Itzkoff,
Deputy Administrator, Federal Railroad Administration.

Federal Highway Administration

List of Subjects in 49 CFR Part 382

Alcohol and drug abuse, Highway safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the FHWA amends 49 CFR part 382, as follows:

PART 382--CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

1. The authority for part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 et seq., 31502; and 49 CFR 1.48.

2. In Sec. 382.107, the definition of "Substance abuse professional" is removed.

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Federal Transit Administration

List of Subjects

49 CFR Part 653

Drug testing, Grant programs--transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 654

Alcohol testing, Grant programs--transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set out in the preamble, the Federal Transit Administration amends 49 CFR parts 653 and 654, as follows:

PART 653--PREVENTION OF PROHIBITED DRUG USE IN TRANSIT OPERATIONS

1. The authority for part 653 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

Sec. 653.7 [Amended]

2. In Sec. 653.7, the definition of "Substance abuse professional" is removed.

PART 654--PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

1. The authority for part 654 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

Sec. 654.7 [Amended]

2. In Sec. 654.7, the definition of "Substance abuse professional" is removed.

Issued in Washington, DC on July 9, 1996.
Gordon J. Linton,
Administrator, Federal Transit Administration.
[FR Doc. 96-18064 Filed 7-16-96; 8:45 am]
BILLING CODE 4910-62-P

the final public hearing on the rule; or

☐ (e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

☐ (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

☐ (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

☐ (h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

☐ (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the small business ombudsman.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No.

25-12.005

Under the provision of subparagraph 120.54(3)(e)6., F.S.,
the rules take effect 20 days from the date filed with the
Department of State or a later date as set out below:

Effective: May 13 1999
(month) (day) (year)

Blanca S. Bayo
BLANCA S. BAYO, Director
Division of Records & Reporting

84
Number of Pages Certified

(S E A L)

RCE

CERTIFICATION OF
MATERIALS INCORPORATED BY REFERENCE
IN RULES FILED WITH THE DEPARTMENT OF STATE

Pursuant to Rule 1S-1.005, Florida Administrative Code, I do hereby certify that the attached are copies of the following material incorporated by reference in Rule 25-12.005, F.A.C.. Under the provisions of subparagraph 120.54(3)(e)(6), F.S., the attached materials take effect 20 days from the date filed with the Department of State, or a later date as specified in the rule.

"Parts 191, 192 and 199 of Title 49, CFR as amended through October 20, 1998 and as identified in the rule"

Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of Records & Reporting

81
Number of Pages Certified

(S E A L)

RCB

FILED
93 MAY -7 PM 2:55
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

Docket No. PS-120; Amdts. 190-4, 190-5, 192-67, and 195-47

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 191, 192, and 195

[Docket No. PS-120; Amdts. 190-4, 191-9, 192-67, and 195-47]

RIN 2137-AB96

Inspection and Burial of
Offshore Gas and Hazardous
Liquid Pipelines

AGENCY: Research and Special Program Administration (RSPA), DOT

ACTION: Final rule.

SUMMARY: Natural gas and hazardous liquid pipelines buried in shallow offshore waters in the Gulf of Mexico have been involved in accidents with fishing and other vessels. Public Law 101-599 was enacted to determine the extent to which pipelines in shallow waters in the Gulf of Mexico may be a hazard to fishing vessels. This Final Rule implements the immediate provisions of Public Law 101-599 amending the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979. Under this final rule, operators of natural gas and hazardous liquid pipelines are required to do the following: (1) Conduct an underwater inspection of pipelines in the Gulf of Mexico and its inlets located in water less than 15 feet deep, by November 16, 1992; (2) report to the Coast Guard those pipelines which have been discovered to be exposed or otherwise present a hazard to navigation and mark such pipelines with a buoy; and (3) bury, within 6 months, those pipelines identified under (2) above, or by any other person. This Final Rule also provides for reporting the results of the underwater inspection to the Department, as well as providing for criminal penalties for damaging, removing, defacing, or destroying a pipeline marker buoy.

EFFECTIVE DATE: The effective date of this final rule is January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Cesar DeLeon, (202) 366-1640, regarding the subject matter of this amendment or the Dockets Unit, (202) 366-4148, regarding copies of this amendment or other material in the docket.

**SUPPLEMENTARY
INFORMATION:**

Background

The RSPA issued a Notice of Proposed Rulemaking (NPRM) on April 29, 1991, (56 FR 19627) proposing regulations to implement the immediate provisions of Public Law 101-599 (enacted November

16, 1990) to conduct underwater inspections of pipelines in shallow waters in the Gulf of Mexico and its inlets. This law was enacted to address the consequences of recent accidents involving fishing vessels that struck pipelines in shallow waters in the Gulf.

On July 24, 1987, a fishing vessel struck and ruptured an 8-inch diameter natural gas liquid pipeline while maneuvering in shallow waters in the Gulf of Mexico off the coast of Louisiana. The released gas ignited, resulting in the deaths of two crewmen. The pipeline was originally installed in 1968 and buried onshore, parallel to the shoreline. In the intervening years, the shoreline underwent substantial erosion, and at the time of the accident, the pipeline reportedly was exposed on the seabed in open water approximately 1 mile offshore.

On October 3, 1989, a 160-foot menhaden fishing vessel, the Northumberland, struck a Natural Gas Pipeline Co. 16-inch diameter offshore gas transmission pipeline about a 1/2 nautical mile offshore in the Gulf of Mexico near Sabine Pass, Texas. Natural gas under a pressure of 835 psig was released. An undetermined source onboard the vessel ignited the gas and engulfed the vessel in flames. Eleven of fourteen crew members died as a result of the accident.

In February 1990, at the request of RSPA, a joint task force was formed, made up of five Federal agencies and two state agencies to develop solutions to the risks posed by the co-existence of pipelines and vessel operations in the Gulf of Mexico. The agencies represented were RSPA, the Minerals Management Service (MMS) of the Department of the Interior, the National Ocean Service of the National Oceanic and Atmospheric Administration, the U.S. Coast Guard, the U.S. Army Corps of Engineers, the Texas Railroad Commission, and the Louisiana Office of Conservation. A report prepared by the joint task force is available in the docket. On April 9, 1990, the RSPA sent an Alert Notice to all operators of natural gas and hazardous liquid pipelines located in offshore waters to advise pipeline operators of recurring safety problems involving marine vessel operations and to alert them that exposed pipelines pose a threat to the safety of the crews of fishing vessels in shallow coastal waters. It also advised pipeline operators to identify and correct any conditions that would violate applicable pipeline safety requirements. RSPA also sent the Alert Notice to several fishing associations to alert the commercial fishing industry to the potential hazards of exposed offshore pipelines.

The RSPA pipeline safety regulations currently require that all newly constructed gas and hazardous liquid offshore pipelines located in water less than 12 feet in depth must have a minimum of 36 inches of cover or 18 inches in consolidated rock (49 CFR 192.327 and 195.248). Newly constructed gas and hazardous liquid pipelines in offshore waters from 12 feet to 200 feet deep must be installed so that the top of the pipe is below the seabed unless the pipe is protected by other equivalent means (§§192.319 and 195.246). The MMS issues right-of-way permits for pipelines on the Outer Continental Shelf (OCS) and requires that newly constructed pipelines be buried 36 inches (30 CFR 250.153). The Corps of Engineers issues permits for burial of offshore pipelines and normally requires that newly constructed pipelines be buried to a depth of 36 inches in water less than 200 feet deep. However, none of the three agencies currently require that pipeline operators conduct an underwater inspection of those pipelines.

Public Law 101-599

Public Law 101-599 amended the Natural Gas Pipeline Safety Act of 1968 (NGPSA) 49 U.S.C. 1671 *et seq.*) and the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) 49 U.S.C. 2001 *et seq.*), which are administered by the RSPA. The law requires that not later than 18 months after enactment or 1 year after issuance of regulations, whichever occurs first, the operator of each offshore gas or hazardous liquid pipeline facility in the Gulf of Mexico and its inlets shall inspect such pipeline facility and report to the Department on any portion of a pipeline facility which is "exposed" or is a "hazard to navigation" (as those terms are defined in this final rule). Therefore, this initial inspection must be completed by May 16, 1992 or 1 year after issuance of regulations, whichever comes first. This requirement shall apply to

pipeline facilities between the high water mark and the point where the subsurface is under 15 feet of water, as measured from mean low water. In accordance with Public Law 101-599, hazardous liquid gathering lines of 4 inch nominal diameter and smaller are excepted from this inspection. The Department may extend the time period for compliance with this inspection requirement for an additional period of up to 6 months for gas transmission pipeline facilities, or up to 1 year for hazardous liquid pipeline facilities. The law provides that any inspection of a pipeline facility which has occurred after October 3, 1989 (the date of the Northumberland accident) may satisfy the inspection requirements if it complies with the pertinent requirements in this final rule.

Public Law 101-599 requires the Department to establish standards by May 16, 1991, on what constitutes an "exposed pipeline facility," and what constitutes a "hazard to navigation." The law requires that pipeline operators report to the Department, through the appropriate Coast Guard offices, potential or existing navigational hazards involving pipeline facilities. As a result of the inspection, an operator of a pipeline facility who discovers any pipeline facility which is a hazard to navigation in water 15 feet deep or less as measured from mean low water, must mark the location with a Coast Guard approved marine buoy or marker and notify the Department. The law provides for criminal penalties for persons who willfully and knowingly damage, deface, remove, or destroy the marine buoy or marker. Public Law 101-599 also requires the Secretary of Transportation to issue regulations requiring each gas and hazardous liquid pipeline facility that has been inspected and found to be exposed or that constitutes a hazard to navigation, be buried within 6 months after the condition is reported to the Department.

Furthermore, Public Law 101-599 requires that not later than 30 months after enactment of the law, or May 16, 1993, the Secretary shall, on the basis of experience with the initial inspection program, establish a mandatory, systematic, and where appropriate, periodic inspection program of offshore pipeline facilities in the Gulf of Mexico and its inlet. This requirement will be addressed in a future rulemaking.

In addition, Public Law 101-599 amends the Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*), which is administered by the Coast Guard to encourage fishermen and other vessel operators to report potential or existing navigational hazards involving pipeline facilities to the Department through the appropriate Coast Guard field office. Upon notification by the pipeline operator or by any other person of a hazard to navigation, the Department will notify the Coast Guard, the Office of Pipeline Safety, other affected Federal and state agencies, and vessel owners and operators in the vicinity of the pipeline facility.

Advisory Committees

This regulatory document was twice brought before the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). These advisory committees were established by statute to consider the feasibility, reasonableness, and practicability of proposed pipeline safety regulations.

The TPSSC met in Washington, DC on February 20, 1991 and the THLPSSC met in Washington, DC on February 21, 1991. These advisory committees informally discussed a draft NPRM, which proposed revisions to the regulations in Parts 192 and 195 regarding offshore pipelines. That draft notice considered by the advisory committees addressed the requirements in Public Law 101-599 as well as additional matters that were not included in the law but which had been addressed by the multi-agency task force formed after the Northumberland accident.

As a result of the opinion of the advisory committees, the proposed rule was narrowed to address only the immediate requirements of Public Law 101-599 and those requirements were proposed in the NPRM. The longer-term mandates of Public Law 101-599, as well as other offshore and underwater pipeline proposals that may merit consideration, will be addressed in a future proposed rulemaking.

Because the law has mandatory deadlines for issuance of the regulations and for completion of the

and the HLPsA to require that "abandoned offshore pipelines be given the same safety considerations as pipelines currently in use. RSPA, in cooperation with the Task Force, will examine the issue of abandoned offshore pipelines as part of the subsequent offshore rulemaking noted previously. However, this final rule has been limited to the NPRM which incorporates the immediate requirements in Public Law 101-599.

Chevron commented that they interpreted the rulemaking to apply to lines constructed prior to the passage of the initial pipeline safety acts, NGPSA and HLPsA. Chevron observed that up to now, these lines have been "grandfathered" from meeting all construction requirements of parts 192 and 195 and if this were no longer true, the applicability sections of parts 192 and 195 should be modified to clarify whether these lines are being regulated and to what degree. Public Law 101-599 requires that all pipelines located in waters less than 15 feet deep in the Gulf of Mexico and its inlets be inspected and that all pipelines that are exposed or are a hazard to navigation be subject to modification, marking, and re-burial and does not make a distinction for pipelines that were constructed prior to the promulgation of the NGPSA and the HLPsA. Therefore, these proposed regulations requiring the inspection and re-burial of pipelines in the Gulf of Mexico and its inlets, are included in subpart L of part 192 (Operations) and in subpart F of part 195 (Operations and Maintenance), which are applicable to all pipelines regardless of when they were constructed.

Teneco Gas commented that they expect the Coast Guard will recognize that agency's responsibility in this matter, and take steps to end the prevailing practice of fishing vessels running in waters that are too shallow for the draft of the vessel. Teneco Gas further commented that the Coast Guard has the opportunity to bring about a great advance in offshore safety by formulating and enforcing minimum fishing boat standards covering maps, instruments, operator training, operator competence, and a prohibition against fishing boats navigating in waters that are insufficiently deep for the boat draft.

The Coast Guard is discussing these issues in their Commercial Fishing Industry Vessel Advisory Committee meetings. RSPA will continue to work with the Coast Guard and that advisory committee in exploring ways that commercial fishing operators can change their fishing practices to protect their vessels from the hazards of pipelines in shallow offshore waters.

The National Transportation Safety Board (NTSB) noted that the NPRM did not include all pipelines in the Gulf of Mexico, such as hazardous liquid pipelines operating at less than 20 percent of the pipe's specified minimum yield strength (SMYS) and hazardous liquid pipelines having 4-inch or less nominal diameter. The NTSB believes that future action by the RSPA must address all submerged pipelines that transport hazardous liquids based on the threat to public safety, rather than the pipeline's physical properties or operating characteristics. With regard to hazardous liquid pipelines having 4-inch or less nominal diameter, Public Law 101-599 specifically excepted hazardous liquid gathering lines of this size from these requirements. With regard to hazardous liquid pipelines operating at 20 percent or less of the pipe's SMYS, the current hazardous liquid pipeline safety regulations do not apply to pipelines at these low-stress levels. An Advance Notice of Proposed Rulemaking (ANPRM) issued by RSPA on October 31, 1990 (55 FR 45822) solicited comments and information for evaluation in determining whether and to what extent this exception should be removed from the regulations. If this exception of pipelines operating at 20 percent or less of SMYS is removed, the subsequent rulemaking on a mandatory and systematic inspection program of offshore pipelines in the Gulf of Mexico and its inlets as required by Public Law 101-599 would apply to such hazardous liquid pipelines.

The following additional points, set forth in the Preamble in the NPRM, bear repeating here. This final rule incorporates all of the immediate requirements of Public Law 101-599 for which RSPA is responsible. These regulations apply similarly to both gas transmission and hazardous liquid pipeline facilities, and are applicable to interstate and intrastate offshore pipelines. In accordance with the current requirements in §§192.1 and 195.1, these rules are applicable to offshore pipeline facilities on the OCS as that term is defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(b) This part does not apply to—

(2) *Onshore gathering of gas outside of, emphasis added* * * *

(iii) Inlets of the Gulf of Mexico except as provided in §192.612 could be construed to reverse the intent of this NPRM, making gathering lines within inlets of the Gulf of Mexico subject to part 192 except the provisions of §192.612. RSPA does not interpret this regulation in the same manner as Exxon.

Nonetheless, RSPA agrees that wording suggested by Exxon may be clearer and has revised this regulation in accordance with the suggestion.

Sections 192.3 and 195.2. Practically all of the industry commentators thought that the term "inlets" in the definition of "Gulf of Mexico and its inlets" in §§192.3 and 195.2 should be better defined. Many industry commentators thought that inlets could be interpreted to include rivers, tidal marshes, lakes, and canals. Public Law 101-599 was enacted to assure that pipelines in shallow offshore waters where commercial fishing vessels navigate will not pose a hazard to those vessels. In that context, the Fisheries Institute, which also commented that inlets should be better defined, attached a list where menhaden and other commercial fishing activities take place. The Fisheries Institute commented that the list was not an exhaustive list but was submitted in hope that it would help in better defining "Gulf of Mexico and its inlets." The list was:

1. Fresh Water Bayou/Inter-coastal Waterway to Calcasieu River, Cameron, Louisiana.
2. Calcasieu Pass, Cameron, Louisiana.
3. Intercoastal Waterway to Morgan City, Louisiana.
4. South West Pass across Vermilion Bay, Intercoastal City, Louisiana.
5. Fresh Water Bayou, Intercoastal City, Louisiana.
6. Houma Navigation Channel/Intercoastal Waterway to Bayou Cheve, Morgan City, Louisiana.
7. Houma Navigation Channel through Grand Callicou Bayou/Callicou Lake, Dulac, Louisiana.
8. Houma Navigation Canal through Cat Island Pass, Dulac, Louisiana.
9. East Pascagoula River, Moss Point, Mississippi.

RSPA is including this list in the Preamble in order to assist pipeline operators in identifying where menhaden and commercial fishing activities take place. Most industry commentators proposed that the definition be revised to be limited to inlets that are open to the sea. Many of these industry commentators also proposed that the exclusion of such inlets as rivers, tidal marshes, lakes, and canals be set forth in the regulation. RSPA agrees that the inlets must be better defined and has revised this definition in the final rule to refer to inlets open to the sea excluding rivers, tidal marshes, lakes, and canals.

It is important to repeat information set forth in the Preamble in the NPRM regarding the term "mean low water." That term is used in this regulation to conform with the language used in Pub. L. 101-599. "Mean low water" can be considered to denote "mean lower low water" as used in the nautical chart datum of the National Ocean Service.

Some commentators argued that the definitions of exposed pipeline and hazard to navigation should be limited to water from 3 feet to 15 feet deep, asserting that vessels do not operate in water less than 3 feet deep or that vessels operating in such shallow waters would be incapable of damaging a pipeline. Some of these commentators also stated that it would be difficult to conduct underwater inspections in such shallow waters. Exxon proposed similar changes and suggested that a definition for "shallow waters" be incorporated in the definitions limiting such waters from 3 to 15 feet.

RSPA does not agree. There are locations in the offshore waters of Louisiana where the seabed deepens very slowly and 3 feet of depth may be a considerable distance out into open waters. Fishing vessels navigate in such shallow waters, especially when some of these offshore areas have silty and soft seabeds where the hulls of the commercial fishing vessels may intrude into the silty seabed and damage the pipeline. In addition, RSPA is not aware of great difficulties regarding underwater inspections in offshore

waters less than 3 feet deep. More importantly, the law requires underwater inspections in waters less than 15 feet deep; so this comment was not incorporated.

Sections 192.612 and 195.413. The Gas Piping Technology Committee (GPTC) commented that many prudent operators of pipelines in the Gulf of Mexico have historically conducted periodic inspections of their offshore pipelines and those operators should be permitted to use an inspection conducted prior to October 3, 1989 as the inspection required in §§192.612 and 195.413, especially in an area of stable seabed conditions. RSPA does not agree. RSPA doubts that those inspections may have included determining the depth of burial of the pipelines. The language of the law is clear that only inspections conducted after October 3, 1989 can be used in compliance with the initial inspection; thus, RSPA has not adopted this recommendation.

Exxon commented that the proposed rules exclude hazardous liquid gathering lines of 4-inch nominal diameter or smaller from the inspection and suggested that a similar exclusion be provided for gas gathering lines. RSPA does not agree. While that exclusion for hazardous liquid gathering lines was provided in the law, such an exclusion was not provided for gas gathering lines. RSPA believes that all gathering lines should be handled similarly and is excluding hazardous liquid gathering lines of less than 4-inch nominal diameter only because of the exclusion in the law. RSPA does not see a reason to deviate from the law with regard to gas gathering lines of less than 4-inch nominal diameter.

Many industry commentators stated that it would be very difficult to complete the inspection by 18 months after enactment of the law, (May 16, 1992), or one year after the issuance of the regulations, whichever came first. Some industry commentators asked that the time for the initial inspection be extended to the end of the 1992 summer construction season. Transco suggested that this could be accomplished by using the provisions of the law that provide for an extension of time of 6 months, or November 16, 1992 for gas pipelines. (It should be noted that the law provides for an extension of time of one year, or May 16, 1993 for hazardous liquid pipelines.) Transco also suggested that operators who act in good faith to complete the necessary surveys in a prudent and cost effective manner, but have been unsuccessful in completing the inspection because of scheduling problems, should be afforded that consideration. This regulation, which will be effective on January 6, 1992, goes beyond the May 16, 1992 deadline.

However, an extension beyond that date would be in keeping with the intent of the law where just cause exists. RSPA has participated in many forums regarding these regulations and concludes that the pipeline operators are acting in good faith, with due diligence and care, in conducting these inspections. Therefore, RSPA will utilize this provision in the law to extend the deadline for conducting this initial inspection for all pipeline operators and has made this requirement effective on November 16, 1992. Furthermore, because of the emerging development of underwater inspection technology during this period, such an extension is justified. This date for completion of the initial inspection is approximately at the end of the 1992 summer construction season in keeping with the suggestions made by industry commentators. RSPA does not see reason for extending this requirement further for hazardous liquid pipelines.

Sections 192.621(b) and 195.413(b). Several industry commentators objected to the term "discovery" used in proposed §§192.621(b), (b)(1), (b)(2), and (b)(3) and 195.413(b), (b)(1), (b)(2), and (b)(3).

Those commentators believe that the term "discovery" should be changed to "determine." Those commentators stated that in areas where there is a congestion of pipelines, an exposed pipeline may be discovered but time should be allowed for the operator to determine if the pipeline belongs to the operator or if it is an abandoned pipeline.

It should be noted that the proposed rule was applicable to an operator that " * * * discovers that a pipeline it operates is exposed " * * * (italicized for emphasis). Therefore, the operator must determine that an exposed pipeline it discovers is a pipeline that it operates. Therefore, RSPA does not believe that the term "discovery" needs to be revised and has not adopted this recommendation.

Transco Gas commented that there is a deficiency in the existing gas pipeline safety regulations (§192.327(e)) that has been carried forward in this proposed rule. The proposed rule appears to require

raised an additional issue that shrimp spawn in the spring and take several weeks to mature. They also said that oysters spawn in the spring and take several years to mature but the first several weeks are critical for survival. panhandle Eastern stated that scheduling reburial during this season may be highly detrimental to the reproduction of the sheffish.

RSPA agrees that some flexibility should be permitted for the reburial of the pipelines that are determined to be exposed or a hazard to navigation. Public Law 101-599 permits RSPA to extend the 6 months for reburial with respect to a pipeline facility for such period as is reasonable. RSPA believes that the reasons stated by some commenters — particularly regarding weather conditions during the winter which could make reburial within 6 months a difficult, costly, and perhaps hazardous procedure — justify extending the 6 month period for reburial. Therefore, this proposed requirement has been amended in this final rule to allow for reburial not later than November 1 of the following year if the 6 month period is later than November 1 of the year that an operator discovers that a pipeline it operates is exposed or a hazard to navigation.

Submar, Inc. commented that the current regulations permit less cover than the 36 inches for normal excavation or 18 inches for rock excavation for offshore pipelines if it is impracticable to comply with the minimum cover requirement, and the proposed rule did not provide that flexibility. That commenter stated that protective mats could be placed over a pipeline requiring reburial that could adequately protect the pipeline. RSPA drafted the proposed rule in accordance with the law that requires reburial.

In addition, RSPA is not sufficiently familiar with the use of these protective mats. Further, the current regulations provide such an option only if it is impracticable to comply with the current cover requirements, making such an option rare. However, RSPA will consider this proposal in a subsequent rulemaking on a mandatory and systematic inspection program of offshore pipelines in the Gulf of Mexico and its inlets as required by Public Law 101-599.

Chevron commented that referencing 33 CFR part 64 as a means to mark pipelines does not provide adequate guidance for pipeline operators. Chevron wondered what minimum buoy placement interval operators should use as a guide to mark an exposed pipeline. If an interval less than one mile is specified, Chevron is concerned that an adequate supply of buoys may not exist. the GPTC commented that Coast Guard buoys are unduly restrictive and costly (about \$900) to be used for a short period of time while the pipeline is scheduled for reburial. The GPTC argued that reflective type buoys that are lower in cost should be permitted, stating that some local Coast Guard Commanders have previously demanded the use of the higher priced, lighted buoys.

RSPA does not agree that the buoys to be used to mark a pipeline should be reflective type buoys because they will only be used up to 6 months. Reflective buoys are very difficult to see at night. The Coast Guard Commanders, being familiar with the offshore waters in their districts, are in a better position to determine the type of buoy that should be used in that district. Therefore, RSPA believes that the local Coast Guard Commander should specify the type of buoy in accordance with 33 CFR part 64, and should not be restricted to low cost reflective buoys. RSPA has been advised by the Coast Guard that they require yellow lighted buoys having a yellow light flashing not more than 30 times per minute. In addition, RSPA concludes that the placement of a buoy should be at the ends of the pipeline segment and at intervals of not more than 500 yards. However, if the pipeline segment that requires marking is less than 200 yards, the segment need only be marked at the center of the segment. One mile intervals, as proposed by Chevron is too far of a distance to indicate that there is an underwater hazard. RSPA has consulted with the Coast Guard concerning these requirements. The Coast Guard advises that a list of supply sources for buoys can be obtained by contacting the Commander, Eighth Coast Guard District, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396; telephone (504) 589-2944 or 589-6234.

Two industry commenters stated that reporting a pipeline to the Coast Guard within 24 hours after discovery did not provide sufficient time under certain circumstances. Since an operator must determine

deep, so that it should cost less than \$8 million to conduct the initial inspection of these pipelines as mandated by Public Law 101-599. Costs are continuing to drop as better technology is developed and underwater inspections become more common. INCAA provided information regarding the underwater inspections that have been conducted as of June 23, 1990, and assuming that this data is representative of the findings in future underwater pipeline inspections, it appears that less than 1 percent of the offshore pipelines may be exposed above the seabed. However, information is not yet available to determine the percentage of the pipelines that may be a hazard to navigation (i.e., those pipelines buried less than 12 inches). Current pipeline technology can be used in reburying pipelines. The cost of reburying a pipeline also varies significantly depending on similar variable factors set forth above.

A Regulatory Evaluation has been prepared and is available in the docket. This evaluation estimates the present value of the benefits to be \$17.6 million and the present value of the costs to be \$8.7 million. Based on the facts available concerning the impact of this final rule, I certify under Section 605 of the Regulatory Flexibility Act that they would not have a significant impact on a substantial number of small entities because small entities do not operate pipelines offshore.

Paperwork Reduction Act

The final rule requires that pipeline operators report to RSPA pipelines in the Gulf of Mexico and its insets that are exposed or a hazard to navigation. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), these information collection requirements have been approved by the Office of Management and Budget.

The reporting and recordkeeping requirements associated with this rule were submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35. The reporting and recordkeeping approval is No. 2137-0583.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. RSPA has determined that it does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects

49 CFR Part 190

Administrative practice and procedure, Penalties, Pipeline safety.

49 CFR Parts 191 and 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends 49 CFR parts 190, 191, 192 and 195 as follows:

PART 190—[AMENDED]

1. The authority citation for part 190 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1677, 1679a, 1679b, 1680, 1681, 1804, 2002, 2006, 2007, 2008, 2009, and 2010; 49 CFR 1.53.

2. Section 190.229 is amended by revising paragraph (d) to read as follows:

§190.229 Criminal penalties generally.

• • • • •

(d) Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign, right-of-way marker, or marine buoy required by the NGPSA, the HLP&A, or the HMTA, or any regulation or order issued thereunder shall, upon conviction, be subject, for each offense, to a fine of not more than \$5,000, imprisonment for a term not to exceed 1 year, or both.

• • • • •

PART 191—[AMENDED]

1. The authority citation for part 191 continues to read as follows:

Authority: 49 App. U.S.C. 1681 (b) and 1808 (b); §§191.23 and 191.25 also issued under 49 App. U.S.C. 1672(a); and 49 CFR 1.53.

2. Section 191.27 is added to read as follows:

§191.27 Filing offshore pipeline completion reports.

(a) Each operator shall, within 60 days after completion of the inspection of all its underwater pipelines subject to §192.612(a), report the following information:

- (1) Name and principal address of operator.
- (2) Date of report.
- (3) Name, job title, and business telephone number of person submitting the report.
- (4) Total number of miles of pipeline inspected.
- (5) Length and date of installation of each exposed pipeline segment, and location, including if available, the location according to the Minerals Management Service or state offshore area and block number tract.
- (6) Length and date of installation of each pipeline segment, if different from a pipeline segment identified under paragraph (a)(5) of this section, that is a hazard to navigation, and the location, including, if available, the location according to the Minerals Management Service or state offshore area and block number tract.

(b) The report shall be mailed to the Information Officer, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

§195.1 Applicability.

• • • • •

(b) • • • • •

(4) Transportation of petroleum in onshore gathering lines in rural areas except gathering lines in the inlets of the Gulf of Mexico subject to §195.413;

• • • • •

3. In §195.2, definitions of *Exposed pipeline*, *Gulf of Mexico and its inlets*, and *Hazard to navigation* are added in appropriate alphabetical order as follows:

§195.2 Definitions.

• • • • •

Exposed pipeline means a pipeline where the top of the pipe is protruding above the seabed in water less than 15 feet deep, as measured from the mean low water.

• • • • •

Gulf of Mexico and its inlets means the waters from the mean high water mark of the coast of the Gulf of Mexico and its inlets open to the sea (excluding rivers, tidal marshes, lakes, and canals) seaward to include the territorial sea and Outer Continental Shelf to a depth of 15 feet, as measured from the mean low water.

Hazard to navigation means, for the purpose of this part, a pipeline where the top of the pipe is less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water.

• • • • •

4. Section 195.57 is added to Subpart B to read as follows:

§195.57 Filing offshore pipeline condition reports.

(a) Each operator shall, within 60 days after completion of the inspection of all its underwater pipelines subject to §195.413(a), report the following information:

(1) Name and principal address of operator.

(2) Date of report.

(3) Name, job title, and business telephone number of person submitting the report.

(4) Total number of miles of pipeline inspected.

(5) Length and date of installation of each exposed pipeline segment, and location, including, if available, the location according to the Minerals Management Service or state offshore area and block number tract.

(6) Length and date of installation of each pipeline segment, if different from a pipeline segment identified under paragraph (a)(5) of this section, that is a hazard to navigation, and the location, including, if available, the location, according to the Minerals Management Service or state offshore area and block number tract.

(b) The report shall be mailed to the Information Officer, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

4. Section 195.413 is added to subpart F to read as follows:

§195.413 Underwater inspection and retrieval of pipelines in the Gulf of Mexico and its inlets.

(a) Except for gathering lines of 4-inch nominal diameter or smaller, each operator shall, in accordance with this section, conduct an underwater inspection of its pipelines in the Gulf of Mexico and its inlets. The inspection must be conducted after October 3, 1980 and before November 16, 1992.

(b) If, as a result of an inspection under paragraph (a) of this section, or upon notification by any person, an operator discovers that a pipeline it operates is exposed on the seabed or constitutes a hazard to navigation, the operator shall—

(1) Promptly, but not later than 24 hours after discovery, notify the national Response Center, telephone: 1-800-424-8802 of the location, and, if available, the geographic coordinates of that pipeline;

(2) Promptly, but not later than 7 days after discovery, mark the location of the pipeline in accordance with 33 CFR Part 64 at the ends of the pipeline segment and at intervals of not over 500 yards long, except that a pipeline segment less than 200 yards long need only be marked at the center; and

(3) Within 6 months after discovery, or not later than November 1 of the following year if the 6 month period is after November 1 of the year that the discovery is made, place the pipeline so that the top of the pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation.

Issued in Washington, DC on November 27, 1991.

Travis P. Dungan,
Administrator, Research and Special Programs Administration.
[FR Doc. 91-28994 Filed 12-4-91; 8:45 am]

Rulemaking Analysis and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. This rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This final rule does not require a Regulatory Impact Analysis, or a regulatory evaluation or an environmental assessment or impact statement under the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism") and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor corrections which will not impose any new requirements on persons subject to the Pipeline Safety Regulations; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

Lists of Subjects

49 CFR Part 190

Administrative practice and procedure, Penalties, Pipeline safety.

49 CFR Part 191

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 193

Fire prevention, Pipeline safety, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 198

Grant programs, Formula, Pipeline safety.

49 CFR Part 199

Alcohol testing, Drug testing, Pipeline safety, Reporting and recordkeeping requirements.

Accordingly, 49 CFR parts 190, 191, 192, 193, 195, 198, and 199 are corrected by making the following amendments:

PART 190—(AMENDED)

1. The authority citation for part 190 is revised to read as follows:

Authority: 49 U.S.C. 5123, 60108, 60112, 60117, 60118, 60120, 60122, and 60123; and 49 CFR 1.53.

2. Section 190.1 is amended by revising paragraph (a) to read as follows:

§190.1 Purpose and scope.

(a) This part prescribes procedures used by the Research and Special Programs Administration in carrying out duties regarding pipeline safety under 49 U.S.C. 60101 et seq. (the pipeline safety laws) and 49 U.S.C. 5101 et seq. (the hazardous material transportation laws).

3. Section 190.3 is revised to read as follows:

§190.3 Definitions.

As used in this part:

Hearing means an informal conference or a proceeding for oral presentation. Unless otherwise specifically prescribed in this part, the use of "hearing" is not intended to require a hearing on the record in accordance with section 554 of title 5, U.S.C.

OPS means the Office of Pipeline Safety, which is part of the Research and Special Programs Administration, U.S. Department of Transportation.

Perron means any individual, firm, joint venture, partnership, corporation, association, State, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

Providing Official means the person who conducts any hearing relating to civil penalty assessments, compliance orders or hazardous facility orders.

Regional Director means the head of any one of the Regional Offices of the Office of Pipeline Safety, or a designee appointed by the Regional Director. Regional Offices are located in Washington, DC (Eastern Region); Atlanta, Georgia (Southern Region); Kansas City, Missouri (Central Region); Houston,

Texas (Southwest Region); and Lakewood, Colorado (Western Region). *Respondent* means a person upon whom the OPS has served a notice of probable violation. RSPA means the Research and Special Programs Administration of the United States Department of Transportation.

State means a State of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

4. Section 190.7 is amended by revising paragraphs (d) and (i), introductory text, to read as follows:

§190.7 Subpoenas; witness fees.

• • • • •

(d) Service of a subpoena upon the person named therein shall be made by delivering a copy of the subpoena to such person and by tendering the fees for one day's attendance and mileage as specified by paragraph (g) of this section. When a subpoena is issued at the instance of any officer or agency of the United States, fees and mileage need not be tendered at the time of service. Delivery of a copy of a subpoena and tender of the fees to a natural person may be made by handing them to the person, leaving them at the person's office with the person in charge thereof, leaving them at the person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, by mailing them by registered or certified mail to the person at the last known address, or by any method whereby actual notice is given to the person and the fees are made available prior to the return date.

• • • • •

(i) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, apply to the official who issued the subpoena, or if the person is unavailable, to the Administrator, RSPA, to quash or modify the subpoena. The application shall contain a brief statement of the reasons relied upon in support of the action sought therein. The Administrator, RSPA, or this issuing official, as the case may be, may:

• • • • •

5. Section 190.9 is amended by revising paragraph (b)(1)(i) to read as follows:

§190.9 Petitions for finding or approval.

• • • • •

(b) • • • •

(1) • • • •

(i) The State agency certified to participate under 49 U.S.C. 60105.

• • • • •

6. Section 190.201 is amended by revising paragraph (a) to read as follows:

§190.201 Purpose and scope.

(a) This subpart describes the enforcement authority and sanctions exercised by the Associate Administrator, OPS for achieving and maintaining pipeline safety. It also prescribes the procedures governing the exercise of that authority and the imposition of those sanctions.

• • • • •

7. Section 190.203 is amended by revising paragraphs (a), (b)(1), (b)(4), and (d) to read as follows:

§190.203 Inspections.

(a) Officers, employees, or agents authorized by the Associate Administrator, OPS upon presenting appropriate credentials, are authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties are relevant to determining the compliance of such persons with the requirements of 49 U.S.C. 60101 et seq. or regulations, or orders issued thereunder.

(b) * * *

(1) Routine scheduling by the Regional Director of the Region in which the facility is located;

(4) Report from a State Agency participating in the Federal Program under 49 U.S.C. 60105;

(d) To the extent necessary to carry out the responsibilities under 49 U.S.C. 60101 et seq., the Administrator, RSPA or the Associate Administrator, OPS may require testing of portions of pipeline facilities that have been involved in, or affected by, an accident. However, before exercising this authority, the Administrator, RSPA or the Associate Administrator, OPS shall make every effort to negotiate a mutually acceptable plan with the owner of those facilities and, where appropriate, the National Transportation Safety Board for performing the testing.

8. Section 190.205 is revised to read as follows:

§190.205 Warning letters.

Upon determining that a probable violation of 49 U.S.C. 60101 et seq. or any regulation or order issued thereunder has occurred, the Associate Administrator, OPS may issue a Warning Letter notifying the owner or operator of the probable violation and advising the operator to correct it or be subject to enforcement action under §§190.207 through 190.235.

9. Section 190.207 is amended by revising paragraphs (a) and (c) to read as follows:

§190.207 Notice of probable violation.

(a) Except as otherwise provided by this subpart, a Regional Director begins an enforcement proceeding by serving a notice of probable violation on a person charging that person with a probable violation of 49 U.S.C. 60101 et seq. or any regulation or order issued thereunder.

(c) The Associate Administrator, OPS may amend a notice of probable violation at any time prior to issuance of a final order under §190.213. If an amendment includes any new material allegations of fact or proposes an increased civil penalty amount or new or additional remedial action under §190.217, the respondent shall have the opportunity to respond under §190.209.

10. Section 190.209 is amended by revising the introductory text and paragraphs (c) and (d) to read as follows:

§190.209 Response options.

Within 30 days of receipt of a notice of probable violation the respondent shall respond to the Regional Director who issued the notice in the following way:

(c) An offer in compromise under paragraph (a) of this section is made by submitting a check or money order for the amount offered to the Regional Director who forwards the offer to the Associate Administrator, OPS for action. If the offer in compromise is accepted by the Associate Administrator, OPS the respondent is notified in writing that the acceptance is in full settlement of the civil penalty action. If an offer in compromise submitted under paragraph (a) of this section is rejected by the Associate Administrator, OPS it is returned to the respondent with written notification. Within 10 days of receipt of such notification, the respondent shall again respond to the Regional Director in one or more of the ways provided in paragraph (a) of this section.

(d) Failure of the respondent to respond in accordance with paragraph (a) of this section or, when applicable, paragraph (c) of this section, constitutes a waiver of the right to contest the allegations in the notice of probable violation and authorizes the Associate Administrator, OPS, without further notice to the respondent, to find facts to be as alleged in the notice of probable violation and to issue a final order under §190.213.

11. Section 190.211 is amended by revising paragraphs (a), (b), (d), and (i) to read as follows:

§190.211 Hearing.

(a) A request for a hearing provided for in this part must be accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations in the notice, the proposed corrective action (including a proposed amendment, a proposed compliance order, or a proposed hazardous facility order), or the proposed civil penalty amount. A respondent's failure to specify an issue may result in waiver of the respondent's right to raise that issue at the hearing. The respondent's request must also indicate whether or not the respondent will be represented by counsel at the hearing. (b) In such circumstances as deemed appropriate by the Regional Director, and only if the respondent concurs, a telephone conference may be held in lieu of a hearing.

(d) The hearing is conducted informally without strict adherence to rules of evidence. The respondent may submit any relevant information and material and call witnesses on the respondent's behalf. The respondent may also examine the evidence and witnesses presented by the government. No detailed record of a hearing is prepared.

(i) After submission of all materials during and after the hearing, the presiding official shall prepare a written recommendation as to final action in the case. This recommendation, along with any material submitted during and after the hearing, shall be included in the case file which is forwarded to the Associate Administrator, OPS for final administrative action.

12. Section 190.213 is amended by revising paragraph (a), (b)(4), (c), introductory text, and (e) to read as follows:

§190.213 Final order.

(a) After a hearing under §190.211 or, if no hearing has been held, after expiration of the 30 day response period prescribed in §190.209, the case file of an enforcement proceeding commenced under §190.207 is forwarded to the Associate Administrator, OPS for issuance of a final order. (b) * * *

(4) The Regional Director's evaluation of response material submitted by the respondent and recommendation for final action to be taken under this section; and

(c) Based on a review of a case file described in paragraph (b) of this section, the Associate Administrator, OPS shall issue a final order that includes—

(c) It is the policy of the Associate Administrator, OPS to issue a final order under this section within 45 days of receipt of the case file, unless it is found impracticable to take action within that time. In cases where it is so found and the delay beyond that period is expected to be substantial, notice of that fact and the date by which it is expected that action will be taken is issued to the respondent.

13. Sections 190.215 is revised to read as follows:

§190.215 Petitions for reconsideration.

(a) A respondent may petition the Associate Administrator, OPS for reconsideration of a final order issued under §190.213. It is requested, but not required, that three copies be submitted. The petition must be received no later than 20 days after service of the final order upon the respondent. Petitions received after that time will not be considered. The petition must contain a brief statement of the complaint and an explanation as to why the effectiveness of the final order should be stayed.

(b) If the respondent requests the consideration of additional facts or arguments, the respondent must submit the reasons they were not presented prior to issuance of the final order.

(c) The Associate Administrator, OPS does not consider repetitious information, arguments, or petitions.

(d) Unless the Associate Administrator, OPS otherwise provides, the filing of a petition under this section does not stay the effectiveness of the final order.

(e) The Associate Administrator, OPS may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. In the event the Associate Administrator, OPS reconsiders a final order, a final decision on reconsideration may be issued without further proceedings, or, in the alternative, additional information, data, and comment may be requested by the Associate Administrator, OPS as deemed appropriate.

(f) It is the policy of the Associate Administrator, OPS to issue notice of the action taken on a petition for reconsideration within 20 days after receipt of the petition, unless it is found impracticable to take action within that time. In cases where it is so found and delay beyond that period is expected to be substantial, notice of that fact and the date by which it is expected that action will be taken is issued to the respondent.

14. Section 190.217 is revised to read as follows:

§190.217 Compliance orders generally.

When the Associate Administrator, OPS has reason to believe that a person is engaging in conduct which involves a violation of the 49 U.S.C. 60101 et seq. or any regulation issued thereunder, and if the nature of the violation, and the public interest warrant, the Associate Administrator, OPS may conduct proceedings under §§ 190.207 through 190.213 of this part to determine the nature and extent of the violations and to issue an order directing compliance.

15. Section 190.219 is amended by revising paragraph (a) to read as follows:

§190.219 Consent order.

(a) At any time before the issuance of a compliance order under § 190.213 the Associate Administrator, OPS and the respondent may agree to dispose of the case by joint execution of a consent order. Upon such joint execution, the consent order shall be considered a final order under § 190.213.

16. Section 190.221 is revised to read as follows:

§190.221 Civil penalties generally.

When the Associate Administrator, OPS has reason to believe that a person has committed an act which is a violation of any provision of the 49 U.S.C. 60101 et seq. or any regulation or order issued thereunder, proceedings under §§ 190.207 through 190.213 may be conducted to determine the nature and extent of the violations and to assess and, if appropriate, compromise a civil penalty.

16a. Section 190.223 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§190.223 Maximum penalties.

(a) Any person who is determined to have violated a provision of 49 U.S.C. 60101 et seq. or any regulation or order issued thereunder, is subject to a civil penalty not to exceed \$10,000 for each violation for each day the violation continues except that the maximum civil penalty may not exceed \$500,000 for any related series of violations.

(b) Any person who knowingly violates a regulation or order under this subchapter applicable to offshore gas gathering lines issued under the authority of 49 U.S.C. § 101 et seq. is liable for a civil penalty of not more than \$25,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense.

(c) Any person who is determined to have violated any standard or order under 49 U.S.C. 60103 shall be subject to a civil penalty of not to exceed \$50,000, which penalty shall be in addition to any other penalties to which such person may be subject under paragraph (a) of this section.

17. Section 190.225, the introductory text, is revised to read as follows:

§190.225 Assessment considerations.

The Associate Administrator, OPS assesses a civil penalty under this part only after considering:

18. Section 190.227 is amended by revising paragraphs (c) and (d) to read as follows:

§190.227 Payment of penalty.

(c) Within 20 days after the respondent's receipt of a final order assessing a civil penalty issued under § 190.213, the respondent may offer to compromise the assessed penalty by submitting, in the

(a) Except as provided by paragraph (b) of this section, if the Associate Administrator, OPS finds, after reasonable notice and opportunity for hearing in accord with paragraph (c) of this section, and §190.211(a), a particular pipeline facility to be hazardous to life or property, the Associate Administrator, OPS shall issue an order pursuant to this section requiring the owner or operator of the facility to take corrective action. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action, as appropriate.

(b) The Associate Administrator, OPS may waive the requirement for notice and hearing under paragraph (a) of this section before issuing an order pursuant to this section when the Associate Administrator, OPS determines that the failure to do so would result in the likelihood of serious harm to life or property. However, the Associate Administrator, OPS shall include in the order an opportunity for hearing as soon as practicable after issuance of the order. The provisions of paragraph (c)(2) of this section apply to an owner or operator's decision to exercise such an opportunity for hearing. The purpose of such a post-order hearing is for the Associate Administrator, OPS to determine whether the order should remain in effect or be rescinded or suspended in accord with paragraph (g) of this section.

(c) * * *

(2) An owner or operator elects to exercise his opportunity for a hearing under this section, by notifying the Associate Administrator, OPS of that election in writing within 10 days of service of the notice provided under paragraph (c)(1) of this section or, under paragraph (b) of this section when applicable. Absence of such written notification waives an owner or operator's opportunity for a hearing and allows the Associate Administrator, OPS to proceed to issue a "hazardous facility order" in accordance with paragraphs (d) through (h) of this section.

* * *

(4) Within 48 hours after conclusion of a hearing under this section, the Presiding Official shall submit a recommendation to the Associate Administrator, OPS as to whether or not a "hazardous facility order" is required. Upon receipt of the recommendation, the Associate Administrator, OPS shall proceed in accordance with paragraphs (d) through (h) of this section. If the Associate Administrator, OPS finds the facility to be hazardous to life or property the Associate Administrator, OPS shall issue an order in accordance with this section. If the Associate Administrator, OPS does not find the facility to be hazardous to life or property, the Associate Administrator, OPS shall dismiss the allegations contained in the notice, and promptly notify the owner or operator in writing by service as prescribed in §190.5.

(d) The Associate Administrator, OPS may find a pipeline facility to be hazardous under paragraph (a) of this section:

(1) If under the facts and circumstances the Associate Administrator, OPS determines the particular facility is hazardous to life or property, or

(2) If the pipeline facility or a component thereof has been constructed or operated with any equipment, material, or technique which the Associate Administrator, OPS determines is hazardous to life or property, unless the operator involved demonstrates to the satisfaction of the Associate Administrator, OPS that, under the particular facts and circumstances involved, such equipment, material, or technique is not hazardous to life or property.

(e) In making a determination under paragraph (d) of this section, the Associate Administrator, OPS shall consider, if relevant:

* * *

(5) Such other factors as the Associate Administrator, OPS may consider appropriate.

* * *

(g) The Associate Administrator, OPS shall rescind or suspend a hazardous facility order whenever the Associate Administrator, OPS determines that the facility is no longer hazardous to life or property. When appropriate, however, such a rescission or suspension may be accompanied by a notice of probable violation issued under §190.207.

(h) At any time after an order issued under this section has become effective, the Associate

Administrator, OPS may request the Attorney General to bring an action for appropriate relief in accordance with §190.235.

22. Section 190.235 is revised to read as follows:

§190.235 Injunctive action.

Whenever it appears to the Associate Administrator, OPS that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of 49 U.S.C. 60101 et seq. or any regulations issued thereunder, the Administrator, RSPA, or the person to whom the authority has been delegated, may request the Attorney General to bring an action in the appropriate U.S. District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages as provided under 49 U.S.C. 60120 and 49 U.S.C. 5123.

23. Section 190.237 is amended by revising paragraph (a) to read as follows:

§190.237 Assessment of plans or procedures.

(a) A Regional Director begins a proceeding to determine whether an operator's plans or procedures required under parts 192, 193, 195, and 199 of this subchapter are inadequate to assure safe operation of a pipeline facility by issuing a notice of amendment. The notice shall provide an opportunity for a hearing under §190.211 of this part and shall specify the alleged inadequacies and the proposed action for revision of the plans or procedures. The notice shall allow the operator 30 days after receipt of the notice to submit written comments or request a hearing. After considering all material presented in writing or at the hearing, the Associate Administrator, OPS shall determine whether the plans or procedures are inadequate as alleged and order the required amendment if they are inadequate, or withdraw the notice if they are not. In determining the adequacy of an operator's plans or procedures, the Associate Administrator, OPS shall consider:

PART 191—[AMENDED]

1. The authority citation for part 191 is revised to read as follows:

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, and 60124; and 49 CFR 1.53.

2. Section 191.3 is amended by removing the definition of Secretary, and adding the definition of Administrator to read as follows:

§191.3 Definitions.

Administrator means the Administrator of the Research and Special Programs Administration or any person to whom authority in the matter concerned has been delegated by the Secretary of Transportation.

part as part of the qualifying test. At initial qualification, a welder may not perform welding unless:

4. Section 192.361 is amended by revising paragraph (f)(1) to read as follows:

§192.361 Service lines: Installation

• • • • •

(f) * * *

- (1) It must be encased in a gas tight conduit;

• • • • •

5. Section 192.367 is amended by revising paragraph (a) to read as follows:

§192.367 Service lines: General requirements for connections to main piping.

(a) Location. Each service line connection to a main must be located at the top of the main or, if that is not practical, at the side of the main, unless a suitable protective device is installed to minimize the possibility of dust and moisture being carried from the main into the service line.

• • • • •

6. Section 192.511 is amended by revising paragraph (a) to read as follows:

§192.511 Test requirements for service lines.

(a) Each segment of a service line (other than plastic) must be leak tested in accordance with this section before being placed in service. If feasible, the service line connection to the main must be included in the test; if not feasible, it must be given a leakage test at the operating pressure when placed in service.

• • • • •

7. Section 192.603 is amended by revising paragraph (c) to read as follows:

§192.603 General provisions.

• • • • •

(c) The Administrator or the State Agency that has submitted a current certification under the pipeline safety laws, (49 U.S.C. 60101 et seq.) with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

9. Section 192.623, the heading, is revised to read as follows:

§192.623 Maximum and minimum allowable operating pressure; Low-pressure distribution systems.

• • • • •

PART 193—[AMENDED]

1. The authority citation for part 193 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53.

2. Section 193.2001 is amended by revising paragraph (a) to read as follows:

§193.2001 Scope of part.

(a) This part prescribes safety standards for LNG facilities used in the transportation of gas by pipeline that is subject to the pipeline safety laws (49 U.S.C. 60101 et seq.) and Part 192 of this chapter.

3. Section 193.2007 is amended by revising the definition of Administrator and the definition of g to read as follows:

§193.2007 Definitions.

• • • • •
Administrator means the Administrator of the Research and Special Programs Administration or any person to whom authority in the matter concerned has been delegated by the Secretary of Transportation.

• • • • •
g means the standard acceleration of gravity of 9.806 meters per second² (32.17 feet per second²).

4. Section 193.2017 is amended by revising paragraph (a) to read as follows:

§193.2017 Plans and procedures.

(a) Each operator shall maintain at each LNG plant the plans and procedures required for that plant by this part. The plans and procedures must be available upon request for review and inspection by the Administrator or any State Agency that has submitted a current certification or agreement with respect to the plant under the pipeline safety laws (49 U.S.C. 60101 et seq.). In addition, each change to the plans or procedures must be available at the LNG plant for review and inspection within 20 days after the change is made.

• • • • •

5. Section 193.2321 is amended by revising paragraph (a) to read as follows:

§193.2321 Nondestructive tests.

(a) The following percentages of each day's circumferentially welded pipe joints for hazardous fluid piping, selected at random, must be nondestructively tested over the entire circumference to indicate any defects which could adversely affect the integrity of the weld or pipe:

Weld type	Cryogenic piping	Other	Test method
Butt welds more than 2	100	30	Radiographic or

• • • • •
(b) The Administrator or the State Agency that has submitted a current certification under the pipeline safety laws (49 U.S.C. 60101 et seq.) with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.
• • • • •

PART 198—[AMENDED]

1. The authority citation for part 198 is revised to read as follows:

Authority: 49 U.S.C. 60105, 60106, 60114; and 49 CFR 1.53.

2. Section 198.3 is amended by revising the definition for Underground pipeline facilities to read as follows:

• • • • •
Underground pipeline facilities means buried pipeline facilities used in the transportation of gas or hazardous liquid subject to the pipeline safety laws (49 U.S.C. 60101 et seq.).
• • • • •

3. Section 198.11 is revised to read as follows:

§198.11 Grant authority.

The pipeline safety laws (49 U.S.C. 60101 et seq.) authorize the Administrator to pay out funds appropriated or otherwise made available up to 50 percent of the cost of the personnel, equipment, and activities reasonably required for each state agency to carry out a safety program for intrastate pipeline facilities under a certification or agreement with the Administrator or to act as an agent of the Administrator with respect to interstate pipeline facilities.

4. Section 198.31 is revised to read as follows:

§198.31 Scope.

This subpart implements parts of the pipeline safety laws (49 U.S.C. 60101 et seq.), which direct the Secretary to require each State to adopt a one-call damage prevention program as a condition to receiving a full grant-in-aid for its pipeline safety compliance program.

5. Section 198.35 is revised to read as follows:

§198.35 Grants conditioned on adoption of one-call damage prevention program.

In allocating grants to State agencies under section 5 of the Natural Gas Pipeline Safety Act or 1968 (49 App. U.S.C. 1674) and under section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2004), the Secretary considers whether a State has adopted or is seeking to adopt a one-call damage prevention program in accordance with §198.37. If a State has not adopted or is not

4. Section 199.205 is amended by revising the definition for State agency to read as follows:

* * * * *

State agency means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 et seq.).

* * * * *

Issued in Washington, DC, on March 28, 1996.

Rose A. McMurray, Acting Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 96-10282 Filed 4-25-96; 8:45 am]

BILLING CODE 4910-60-P

Docket PS-125, Notice 2; Amdt. ~~1000000~~

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 191, 192 and 193 (Amdt. 190.7, ~~190.7~~ 192-77, 193-12)

[Docket PS-125; Notice 2]

RIN 2137-AC28

Regulatory Reinvention Initiative: Pipeline Safety Program Procedures; Reporting Requirements; Gas Pipeline Standards; and Liquefied Natural Gas Facilities Standards

AGENCY: Research and Special Programs Administration (RSPA), DOT

ACTION: Final rule.

SUMMARY: This final rule changes various administrative practices in the Pipeline safety program and makes minor modifications to requirements for gas detection, protective enclosures, and pipeline testing temperatures. These changes will eliminate unnecessary or overly burdensome requirements, and reduce costs in the pipeline industries without compromising safety.

EFFECTIVE DATE: The effective date of this final rule is July 3, 1995. However, affected parties will not have to comply with the information collection requirements in 49 CFR Part 193 until the DOT publishes in the Federal Register the Control Numbers assigned by the Office of Management and Budget (OMB) to these collection of information requirements. Publication of the Control Numbers notifies the public that OMB has approved these requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, (202) 366-5523 or online at herrick@rspa.dot.gov regarding the subject matter of this final rule, or the Dockets Unit, (202) 366-5046, regarding copies of this final rule or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background:

In a memorandum dated March 4, 1995, the President provided direction to the heads of Departments and agencies on carrying out his Regulatory Reform Initiative for reinventing the government. As part of this initiative, RSPA established a program to review existing pipeline safety regulations in order to identify those that were outdated or in need of reform.

On April 5, 1995, RSPA published a notice in the Federal Register soliciting comments from the pipeline industry as well as other interested parties (60 FR 17295, April 5, 1995). RSPA also conducted

three outreach meetings in 1995 in Dallas, TX, Lakewood CO, and Houston, TX. Many comments were received both at the outreach meetings and in response to the Federal Register notice.

As a result of these comments, RSPA revisited this rulemaking which began in 1992. On November 6, 1992, RSPA published a notice of proposed rulemaking (NPRM) (57 FR 53085, November 6, 1992) proposing changes to Parts 190, 191, 192 and 193. The comment period closed on December 7, 1992. RSPA received comments from 22 regulated pipeline companies, three pipeline trade associations, one consultant, one technical committee, and two state agencies (29 total comments received).

RSPA also requested a review of the proposal affecting natural gas facilities by mail balloting from the Technical Pipeline Safety Standards Committee (TPSSC). This 15-member committee was established by statute to consider the feasibility, reasonableness, and practicability of all proposed pipeline safety regulations.

After initial balloting, each TPSSC member reviewed the ballots and comments of each of the other members, and had the option to change his or her initial vote or comment if desired. Although some TPSSC members did not vote on every proposed change, a majority of TPSSC members found all the changes adopted by this rule to be technically feasible, reasonable, and practicable.

Changes to Part 190 Requirements

§190.203 Inspections.

Section 190.203(c) currently requires that, after an Office of Pipeline Safety (OPS) inspection, an operator must respond to a "Request for Specific Information within 30 days." RSPA proposed amending this section to increase the time to 45 days. The increase would enable the operator to provide RSPA with more complete information to use in evaluating inspection results.

RSPA received 19 comments from operators. State regulatory agencies and trade groups in response to this proposal. All commenters agreed that the time period should be extended. In addition, one commenter suggested that a further extension be granted to cases involving detailed "specific information" that may require longer than 45 days to gather.

RSPA Response

RSPA believes that 45 days will usually be adequate. In situations where more time is required the Regional Director has the authority to extend the time allowed for a response. Therefore, the revision is adopted as proposed.

§190.209 Response Options.

RSPA proposed deleting section 190.209(c). Section 190.209(c) currently allows a respondent to offer a compromise to a Notice of Probable Violation and Proposed Civil Penalty by submitting a check or money order for the amount offered to the Regional Director who forwards the offer to the Associate Administrator, OPS for action. If the Associate Administrator, OPS, accepts the offer in compromise, the respondent is notified in writing that the acceptance is in full settlement of the civil penalty action. If an offer in compromise is rejected, it is returned to the respondent with written notification.

RSPA received 19 comments from operators, State regulatory agencies and trade groups on the proposed deletion of §190.209(c). Most commenters agreed with the proposed deletion. Two commenters

official at the hearing. The respondent may examine and respond to or rebut this material. RSPA proposed to revise this regulation to provide the respondent the opportunity to review material in the case file pertinent to the issue prior to any hearing.

RSPA received 20 comments in response to §190.211. The comments were provided by an array of trade organizations, state regulators, agencies and operators. All commenters agree with the proposed language. However, two commenters recommend that the case file be automatically provided to all respondents at least 30 days before the hearing. They conclude that any respondent requesting a hearing will want to review all material in the case file and that automatically providing the material would eliminate unnecessary correspondence between the respondent and the agency.

RSPA Response

RSPA agrees that a copy of the case file should be provided to a respondent prior to a hearing. However, this practice should not include automatic mailing of a case file when a request for a hearing is submitted to the agency. The respondent may wish to address only some of the issues in the Notice of Probable Violation in the hearing- thus mailing the entire file may in some instances result in unnecessary expense. Therefore, §190.211 is amended as proposed in the NPRM. Section 190.211(f) is also amended to clarify that the respondent will continue to have the opportunity to offer any relevant information during the hearing.

Section 190.215 Petitions for reconsideration.

Section 190.215(d) currently states that the filing of a petition for reconsideration does not stay the effectiveness of the final order. The proposed revision would automatically stay payment of any civil penalty assessed if a petition for reconsideration is filed. This will result in cost savings to the pipeline operator by delaying civil penalty payments until a decision is made on the petition for reconsideration.

RSPA received 20 comments on the proposed rule from operators, State regulatory agencies and trade groups. All commenters support the proposed amendment. Two commenters suggested that all requirements or actions contained in a final order be stayed because the final order may require the respondent to make significant facility or operational modifications that may exceed the cost of any civil penalty and these expenses should be delayed, until final resolution of the case, unless a clear public safety risk exists.

RSPA Response

RSPA agrees that final orders requiring significant facility or operational modifications should sometimes be delayed until final resolution of the case. However, because an automatic stay could delay corrective actions related to safety without an evaluation of any potential impact of the delay, the rule does not provide for an automatic stay in the case of orders requiring action other than the payment of money. Stays in cases involving corrective action will be considered on a case-by-case basis.

Section 190.227 Payment of penalty

Section 190.227(a) currently states that payment of a civil penalty must be made by certified check or money order payable to the "Department of Transportation." RSPA proposed to continue to allow this

method for a civil penalty of less than \$10,000. Under new section 190.227(b), RSPA proposed to require that payments of \$10,000 or more be made by wire transfer through the Federal Reserve Communications System to the account of the U.S. Treasury.

In response to the proposed amendment of §190.227, RSPA received 20 comments from operators, State regulatory agencies, and trade groups. Most commenters agree with the proposed amendment. One commenter recommends that the proposed language in §190.227(b) be modified to read "twenty business days or thirty calendar days." This, he suggests, would aid smaller companies.

Four commenters disagree with the proposed changes to the regulation. They question RSPA's need to require wire transfers of civil penalties of \$10,000 or more. They argue that this restriction serves no purpose and unnecessarily limits the options of payees.

RSPA Response

RSPA is required by Departmental regulations (49 CFR 89.21(b)(3)) to collect amounts over \$10,000 through wire transfer. Therefore, the proposed amendment to section 190.227 will be adopted.

Changes to Part 191 Requirements

The following discussion explains the changes in Part 191:

Section 191.1 Scope

Currently section 191.1(b)(1) contains the phrase "on the Outer Continental Shelf (OCS)". RSPA proposed to delete this phrase because the regulation does not clearly specify where the applicability of Part 191 begins on offshore gathering lines in state waters. An operator recommended a similar change in comments responding to an NPRM proposing to clarify the definition of gathering lines (56 FR 48505, September 25, 1991; Docket PS-122).

RSPA's revision will clarify that Part 191 does not apply to field production lines; i.e., flow lines in state offshore waters, similar to the present exception on the OCS. No substantive comments were received in response to this proposal.

RSPA Response

Therefore, RSPA is amending section 191.1 as proposed.

Changes to Part 192 Requirements

The following discussion explains the change to Part 192:

Section 192.513 Test requirements for Plastic Pipelines

This regulation prescribes minimum test requirements for plastic pipelines to ensure discovery of all potentially hazardous leaks. RSPA proposed to amend paragraph (c) of the rule to clarify that, at elevated

proposed to apply §193.2819(f) only to buildings "that house a flammable fluid or are connected by piping or conduit to a source of flammable fluid."

Twelve TPSSC members supported the proposal completely, one member supported it but recommended deletion of "or conduit," and two members abstained. The reason given for deleting "or conduit" was that the National Electrical Code (NEC), referenced in Part 193, requires conduits between hazardous and nonhazardous areas to be sealed to prevent accidental migration of flammable gas or vapor.

RSPA received comments on the proposed rule from 15 operators, two pipeline-related associations, and one consultant. None of these commenters objected to the proposal. However, two commenters suggested we delete "or conduit" because of the NEC safeguard mentioned above, while two others suggested that "conduit" be modified by uninterrupted."

Two commenters recommended that RSPA expand the proposed exception to include buildings whose only source of flammable fluid is fuel for heating or cooking. When these sources were low pressure and odorized, it was concluded that they posed minimal risk.

RSPA Response

Deleting the words "or conduit" would not be appropriate because all existing conduits may not have been installed under current NEC standards and thus may not be sealed against possible intrusion of gas. However, in the final rule, RSPA has added the word "uninterrupted" between "or" and "conduit". This will relieve an operator from the need to protect a building which is sealed pursuant to the NEC against accidental migration of gas or vapor. We did not adopt the comment to expand the proposed exception to buildings whose only source of flammable fluid is fuel. The risk is not minimal in the context of an LNG plant. When LNG is piped into a building for heating or cooking, there is an opportunity for gas to escape undetected inside the building and ignite. However slight this opportunity, the potential consequences of any building fire or explosion are magnified by the LNG plant setting. Thus, we do not believe the existing rule should be relaxed further to exclude buildings whose only source of flammable fluid is gas for heating or cooking.

Section 193.2907 Protective enclosure construction.

Paragraphs (b)(1) through (3) and (c) of this rule dictate specific material and design features of protective enclosures (i.e., fences and walls) that surround certain LNG facilities. For example, fences must be maintained of at least No. 11 American wire gauge. RSPA's review concluded that such prescriptive requirements are unnecessary and overly burdensome in view of the performance standard under §193.2907(a) governing the design and construction of protective enclosures. That standard provides that each protective enclosure must have sufficient strength and configuration to obstruct unauthorized access to the facilities enclosed. RSPA, therefore, proposed to repeal the prescriptive requirements and rely solely on the performance standard.

Twelve TPSSC members fully supported the proposal, one member supported it but recommended an editorial change, and two members abstained. The editorial change was not explained and has not been adopted.

RSPA received comments on the proposed rule from 12 operators and one pipeline-related association. Each of these commenters supported the proposal.

RSPA Response

Therefore, §193.2907 is amended as proposed.

Rulemaking Analyses:

Paperwork Reduction Act.

Documentation for the information collection requirements for Parts 191 and 193 was submitted to the Office of Management and Budget (OMB) during the original rulemaking processes. Currently, regulations in Part 191 are covered by OMB Control Numbers 2137-0522 and 2137-0578. The Control Numbers for regulations in Part 193 have expired and are currently in the process of renewal through review by OMB. Under the Paperwork Reduction Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. Therefore the information collection requirements of Part 193 will not be effective until the renewal process is complete and is announced in a subsequent Federal Register notice. The applicable Control Number will remain 2137-0048. Part 190 imposes no paperwork requirements on the pipeline industry. Regulations in Part 192 are covered by OMB Control Numbers 2137-0049 and 2137-0583. The notice proposed no additional information collection requirements. Accordingly, there is no need to repeat those submissions in this final rule.

E. O. 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore was not subject to review by the Office of Management and Budget. The rule is not significant under the Regulatory Policies and Procedures of the DOT (44 FR 11034, February 26, 1979). A Regulatory Evaluation has been prepared and is available in the Docket. RSPA estimates the changes to existing rules will result in an estimated savings of \$1,200,000 for the pipeline industry without associated costs and with no adverse effect on safety. As discussed above, these savings will come largely from the elimination of unnecessary requirements.

Regulatory Flexibility Act

Few of the companies subject to this rulemaking meet the criteria for small companies. However, RSPA sought such impact information in response to this rulemaking. Accordingly, based on the facts available concerning the impact of the proposal and the response received, I certify under Section 605 of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities.

E. O. 12612

RSPA has analyzed the rule changes under the criteria of Executive Order 12612 (52 FR 41685, October 30, 1987). We find it does not warrant preparation of a Federalism Assessment.

List of Subjects

respondent.

(c) An attorney from the Office of the Chief Counsel, Research and Special Programs Administration, serves as the Presiding official at the hearing.

• • • • •

(e) Upon request by respondent, and whenever practicable, the material in the case file pertinent to the issues to be determined is provided to the respondent 30 days before the hearing. The respondent may respond to or rebut this material at the hearing.

(f) During the hearing, the respondent may offer any facts, statements, explanations, documents, testimony or other items which are relevant to the issues under consideration.

• • • • •

5. Section 190.215 is amended by revising paragraph (d) to read as follows:

§190.215 Petitions for reconsideration.

(d) The filing of a petition under this section stays the payment of any civil penalty assessed. However, unless the Associate Administrator, OPS otherwise provides, the order, including any required corrective action, is not stayed.

6. Section 190.227 is amended by revising paragraphs (a) and (b); and by removing paragraphs (c) and (d) to read as follows:

§190.227 Payment of penalty.

(a) Except for payments exceeding \$10,000, payment of a civil penalty proposed or assessed under this subpart may be made by certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Miles Monroney Aeronautical Center, Financial Operations Division (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125, or by wire transfer through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Payments exceeding \$10,000 must be made by wire transfer. Payments, or in the case of wire transfers, notices of payment, must be sent to the Chief, General Accounting Branch (M-86.2), Accounting Operations Division, Office of the Secretary, room 2728, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

(b) Payment of a civil penalty assessed in a final order issued under §190.213 or affirmed in a decision on a petition for reconsideration must be made within 20 days after receipt of the final order or decision. Failure to do so will result in the initiation of collection action, including the accrual of interest and penalties, in accordance with 31 U.S.C. §3717 and 49 C.F.R. Part 89.

Part 191 - [AMENDED]

1. The authority citation for Part 191 continues to read as follows:

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, and 60124; and 49 CFR 153.

2. Section 191.1 is amended by revising paragraph (b)(1) to read as follows:

§191.1 Scope.

• • • • •

(b) • • •

(b) Openings in or under protective enclosures must be secured by grates, doors or covers of construction and fastening of sufficient strength such that the integrity of the protective enclosure is not reduced by any opening.

Issued in Washington D.C. on May 23, 1996.

Kelley S. Coyner,

Acting Deputy Administrator Research and Special Programs Administration

[FR Doc. 96-13770 Filed 5-31-96; 8:45 am]

BILLING CODE 4910-60-P

Docket No. RSPA 97-2096; Amdt No. [REDACTED]

DEPARTMENT OF TRANSPORTATION
Research and Special Programs Administration
49 CFR Parts 191, 192 and 195
RIN 2137-AC99

Pipeline Safety: Regulations Implementing Memorandum of Understanding With the Department of the Interior

ACTION: Direct final rule.

SUMMARY: This direct final rule (DFR) would implement a provision of a December 10, 1996, Memorandum of Understanding (MOU) between the Department of the Interior (DOI) and the Department of Transportation (DOT) regarding Outer Continental Shelf (OCS) pipelines by redesignating the point at which an OCS pipeline is subject to RSPA regulations. Under this rule, RSPA would establish and enforce design, construction, operation, and maintenance regulations and investigate certain accidents for all pipelines located downstream of the point at which operating responsibility for the pipelines transfers from a producing operator to a transporting operator.

DATES: This direct final rule takes effect March 19, 1998. If RSPA does not receive any adverse comment or notice of intent to file an adverse comment by January 20, 1998 the rule will become effective on the date specified. RSPA will issue a subsequent notice in the Federal Register by February 17, 1998, after the close of the comment period, to confirm that fact and reiterate the effective date. If an adverse comment or notice of intent to file an adverse comment is received, RSPA will issue a timely notice in the Federal Register to confirm that fact and to withdraw the DFR in whole or in part. RSPA may then incorporate the adverse comment into a subsequent DFR or may publish a notice of proposed rulemaking.

ADDRESSES: Written comments on the subject of this DFR may be submitted to the Dockets Facility, U.S. Department of Transportation, 400 Seventh Street, SW, Plaza 401, Washington, DC 20590-0001. Comments should identify the docket number of this DFR, RSPA-97-2096. Persons should submit the original and one copy. Persons wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard. Alternatively, comments may be submitted via e-mail to le.herrick@rspa.dot.gov. The Dockets facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, (202) 366-5523 or e-mail le.herrick@rspa.dot.gov regarding the subject matter of this DFR, or the Dockets Facility, (202) 366-5046, regarding copies of this DFR or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

comes under these regulations as a result of this rulemaking qualifies for use under the DOT regulations if the operator prepares and follows a written procedure to carry out the requirements of 49 CFR 192.14 or 195.5 (Conversion to service subject to this part). Pipeline segments designed and constructed under DOT regulations before March 19, 1998 may continue to operate under DOT design and construction requirements until significant modifications or repairs are made to those segments. After March 19, 1998 DOI operational and maintenance requirements will apply to those segments.

Rulemaking Analysis

The December 1996 MOU redefined the DOT/DOI regulatory boundary definition from the OCS facility where hydrocarbons are "first produced, separated, dehydrated, or otherwise processed" to the point at which "operating responsibility for the pipelines transfers from a producing operator to a transporting operator". The MOU places, to the greatest extent practicable, producer-operated pipelines under DOI regulation and transporter-operated pipelines under DOT regulation. The changes in this rule would substantially reduce the regulatory burdens currently caused by the overlapping Federal regulatory responsibilities and the inconsistencies between the requirements. The changes will substantially increase the efficiency of governmental resources on the OCS without compromising safety.

Executive Order (E.O.) 12866

RSPA reviewed this rule under E.O. 12866 and determined that this is not an economically significant rule. The Office of Management and Budget (OMB) has not asked to review this rule under E.O. 12866.

Regulatory Flexibility Act

Oil and gas and production and transportation companies are classified under Standard Industrial Codes (SIC's) by the Census Bureau. The Small Business Administration further classifies "small businesses" in the various offshore sectors as follows: (1) Oil and gas producers that have fewer than 500 employees, (2) liquid pipeline companies that have fewer than 1,500 employees; (3) natural gas pipeline companies that have gross annual receipts of \$25 million or less; and (4) offshore oil and gas field exploration service or production service companies that have gross annual receipts of \$5 million or less. There are many companies on the OCS that are "small businesses" by these definitions. However, the technology necessary for conducting offshore oil and gas exploration and development activities is very complex and costly, and most entities that engage in offshore activities have considerable financial resources well beyond what would normally be considered "small business." These entities customarily conduct their operations by contracting with offshore drilling or service companies and therefore tend to have relatively few employees compared to the considerable financial resources of their operations.

This rule would affect a substantial number of "small entities," however, the economic effects of the rule would not be significant. The economic effects on the oil and gas production and transportation companies directly affected by the rule would be insignificant because of the minimal costs that operators incur during the first year that the rule is implemented. (In that year, offshore producers would have to identify all points on their pipelines at which operating responsibility transfers from a producer to a transporter. In succeeding years there would be virtually no economic impact resulting from the rule.) The offshore service companies would be indirectly affected by the rule through their contractual relationships with the primary producing and transporting companies—they would not be directly regulated in any way. This rule would not impose any new restrictions on small pipeline service companies or manufacturers, nor will it cause their business practices to change. To the extent that this rule might eventually cause some of the relatively larger OCS operators to make modifications to their pipelines, it may have a minor beneficial effect of increasing demand for the services and equipment of smaller service companies and

manufacturers.

Paperwork Reduction Act

This rule contains a collection of information which RSPA is Submitting to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of RSPA's continuing effort to reduce paperwork and respondent burdens, RSPA invites the public and other Federal agencies to comment on any aspect of the reporting burden in 49 CFR 192 and 195 as amended by this DFR. Submit your comments to the Office of Information and Regulatory Affairs; OMB, Attention: Desk Officer for the Department of Transportation (Docket No. RSPA 97-2096); Washington, D.C. 20503. Send a copy of your comments to L.E. Herrick, Room 2335, 400 Seventh Street, Washington, DC 20590-0001. You may obtain a copy of the supporting statement for the collection of information by contacting the Dockets Facility.

OMB may make a decision to approve or disapprove this collection of information after 30 days from receipt of our request. Therefore, your comments are best assured of being considered by OMB if OMB receives them within that time period. However, RSPA will consider all comments received during the comment period for this direct final rule.

The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The title of this collection of information is "49 CFR 191, 192 and 195 Pipeline Safety: Regulations Implementing Memorandum of Understanding with the Department of the Interior."

The collection of information in the DFR and for each transporter operating a pipeline consists of: (1) Reviewing existing pipeline maps, (2) conferring and agreeing with operators of adjoining production pipeline segments concerning the locations of specific transfer points, and (3) either marking directly on each pipeline or depicting on a schematic the specific point on each pipeline where operating responsibility transfers from the producing operator to a transporting operator. As stated above under the "Intent of the Rule" section, specific transfer points will be easily identifiable in most cases, either because of specific valves or flanges where the adjoining operations connect, or because of differences in paint that adjoining operators use to protect and maintain pipeline coatings or surfaces.

Generally operators will have until 60 days after the date the rule becomes final to durably mark the points at which operating responsibility transfers. For those relatively few instances where the transfer points are not identifiable by durable marking, operators will have 180 days after the date the rule becomes final to identify, on a schematic, the transfer points. The requirement to identify the boundary is mandatory. The RSPA will use the information to determine the demarcation where DOT will establish and enforce design, construction, operation, and maintenance regulations and investigate certain accidents, as distinguished from MMS responsibilities.

In calculating the burden, RSPA assumed that respondents perform most of the requirements and maintain records in the normal course of their activities, such as painting their pipelines and maintaining valves and flanges. RSPA considers these to be usual and customary practices and did not include them in the burden estimates. Commenters are invited to provide information if they disagree with this assumption and they should tell RSPA what are the burden hours and costs imposed by this collection of information (i.e., marking of transfer points).

The regulated community consists of approximately 160 Federal OCS oil and gas producers and 70 transportation pipeline operators. There are approximately 3,000 points where operating responsibility for pipeline transfers from a producer to a transporter. The RSPA assumes from discussions with MMS and the operators that about 2,400 (representing 80 percent) of these transfer points are already marked. Therefore, this rulemaking would require a one-time identification and marking of about 600 points where operating responsibility for pipelines transfers from a producer to a transporter. For the 2,400 transfer

For the reasons set out in the preamble, RSPA amends 49 CFR parts 191, 192 and 195 as follows:

PART 191--[AMENDED]

1. The authority citation for part 191 continues to read as follows:

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, and 60124; and 49 CFR 1.53.

2. Section 191.1 is amended by adding paragraph (b)(3) to read as follows:

Sec. 191.1 Scope.

(b) ***

- (3) On the Outer Continental Shelf upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator.

3. Section 191.3 is amended by adding a definition in alphabetical order to read as follows:

Sec. 191.3 Definitions.

Outer Continental Shelf means all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

PART 192--[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; 49 CFR 1.53.

2. Section 192.1 is amended by adding paragraph (b)(5) to read as follows:

Sec. 192.1 Scope of part.

(b) ***

- (5) On the Outer Continental Shelf upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator.

3. Section 192.3 is amended by adding a definition in alphabetical order to read as follows:

Sec. 192.3 Definitions.

Outer Continental Shelf means all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the

subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

4. Section 192.10 is added to read as follows:

Sec. 192.10 Outer continua— shelf pipelines.

Operators of transportation pipelines on the Outer Continental Shelf (as defined in the Outer Continental Shelf Lands Act, 43 U.S.C. 1331) must identify on all their respective pipelines the specific points at which operating responsibility transfers to a producing operator. For those instances in which the transfer points are not identifiable by a durable marking, each operator will have until September 15, 1998 to identify the transfer points. If it is not practicable to durably mark a transfer point and the transfer point is located above water, the operator must depict the transfer point on a schematic located near the transfer point. If a transfer point is located subsea, then the operator must identify the transfer point on a schematic which must be maintained at the nearest upstream facility and provided to RSPA upon request. For those cases in which adjoining operators have not agreed on a transfer point by September 15, 1998 the Regional Director and the MMS Regional Supervisor will make a joint determination of the transfer point.

PART 195—(AMENDED)

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Section 195.1 is amended by adding a new paragraph (b)(6) and redesignating paragraphs (b)(6) through (b)(8) as paragraphs (b)(7) through (b)(9) to read as follows:

Sec. 195.1 Applicability.

(b) ***

(6) Transportation of hazardous liquid or carbon dioxide in Outer Continental Shelf pipelines which are located upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator.

3. Section 195.2 is amended by adding a definition in alphabetical order to read as follows:

Sec. 195.2 Definitions.

Outer Continental Shelf means all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

4. Section 195.9 is added to read as follows:

Sec. 195.9 Outer continental shelf pipelines.

Operators of transportation pipelines on the Outer Continental Shelf must identify on all their respective pipelines the specific points at which operating responsibility transfers to a producing operator. For those instances in which the transfer points are not identifiable by a durable marking, each operator will have until September 15, 1998 to identify the transfer points. If it is not practicable to durably mark a transfer point and the transfer point is located above water, the operator must depict the transfer point on a schematic maintained near the transfer point. If a transfer point is located subsea, the operator must identify the transfer point on a schematic which must be maintained at the nearest upstream facility and provided to RSPA upon request. For those cases in which adjoining operators have not agreed on a transfer point by September 15, 1998 the Regional Director and the MMS Regional Supervisor will make a joint determination of the transfer point.

Issued in Washington D.C. on November 12, 1997.

Richard B. Felder,
Associate Administrator for Pipeline Safety.
[FR Doc. 97-30216 Filed 11-18-97; 8:45 am]
BILLING CODE 4910-60-P

Persons wishing to receive confirmation of receipt of their comments must include a self-addressed, stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room Number 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, or on Federal holidays when the facility is closed.

FOR FURTHER INFORMATION CONTACT: Ebon M. Wymen, (202) 366-0918, or by e-mail (ebon.wymen@arpa.dot.gov), regarding the subject matter of this Notice; or the Dockets Unit, (202) 366-4453, for copies of this final rule or other material in the docket. Further information can be obtained by accessing OP's Internet Home Page at: ops.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

In a March 1995 memorandum, President Clinton directed Federal regulatory agencies to, among other things, conduct a page-by-page review of all agency regulations, cutting or revising those that were obsolete, intrusive, or better handled by parties other than the Federal government (i.e., private business, State, or local government).

In response to the President's directive, RSPA issued a final rule on May 24, 1996 (61 FR 26121) that updated references to voluntary specifications and standards. This rulemaking is the second annual update of the pipeline safety regulations to reduce unnecessary burdens on the regulated community and to ensure that the pipeline safety regulations incorporate the most current technical standards and specifications.

Incorporation by Reference

RSPA is incorporating by reference all or portions of nine updated documents containing practices, codes, standards, and specifications developed and published by technical organizations, including the American Society of Mechanical Engineers, American Society for Testing and Materials, Manufacturers Standardization Society of the Valve and Fittings Industry, and National Fire Protection Association. The updated standards incorporate the latest technology and engineering practice. Adoption of these updated documents assures that pipeline operators will not be unnecessarily burdened with outdated materials, design, and construction requirements.

These documents can be obtained by contacting the following organizations:

1. American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.
2. The American Society of Mechanical Engineers (ASME), United Engineering Center, 345 East 47th Street, New York, NY 10017.
3. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS), 127 Park Street, NW, Vienna, VA 22180.
4. National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

These documents are available for inspection at the following locations:

1. Office of Pipeline Safety, room 2335, U.S. Department of Transportation, 400 7th Street,

SW, Washington, DC 20590.

2. Office of the Federal Register, 800 N. Capitol Street, NW, Suite 700, Washington, DC 20408.

Other revisions

Clarifications

This document amends the following pipeline safety regulations to clarify their meaning:

1. Section 192.16(b)(5) states that "The operator (if applicable), plumbers, and heating contractors can assist in locating, inspecting, and repairing the customer's buried piping." This final rule clarifies the reference by deleting the term "plumbers" and inserting the phrase "plumbing contractors".

2. Section 192.614(b)(5) requires operators to "Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins." This requirement can be confusing to the operator in terms of interpreting the meaning of "as far as practical." Therefore, this final rule amends this paragraph to require temporary marking of buried pipelines before excavation activities begin "except in emergency situations."

3. Section 195.56(a) describes safety-related condition reports "under §191.55(a) . . .", which is inaccurate. Safety-related condition report requirements for Part 195 are contained in §195.55(a). This final rule makes that clarification.

4. The last line of §199.17(a) provides that "samples may be discarded following the end of the 365 period." This final rule clarifies that samples may be discarded following the end of the "365-day period." Also, this final rule revises the language containing the term "his representative," on line 8, to remove the specific reference to gender.

Grammatical Corrections

In various sections of the pipeline safety regulations, minor grammatical errors exist that need correction, and gender-specific language that need revision. The following are the grammatical corrections covered in this rulemaking:

1. §190.7(a)—addition of a comma after the term "RSPA", on line 5, and revision of the language containing the term "him," on line 8, to remove the specific reference to gender.
2. §190.203(a)—addition of a comma after the term "OPS", on line 3.
3. §190.209—addition of a comma after the term "violation", on line 2.
4. §192.107(b)(2)—addition of a comma after the term "section", on line 3.
5. §193.2059(d)(1)(i)—deletion of the comma after the term "but" and the addition of a comma after the term "system" on line 8.

Updates

In §191.21 of the pipeline safety regulations, an authorization date follows the Office of Management and Budget (OMB) Control Number. Although the OMB number is still current, this notice removes the unnecessary authorization date. This section is amended to read as follows:

Annual reports, Incident reports, Pipeline safety.

49 CFR Part 192

Incorporation by reference, Natural gas, Pipeline safety.

49 CFR Part 193

Incorporation by reference, Liquefied natural gas (LNG), Pipeline safety.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety.

49 CFR Part 199

Drug and alcohol testing, Pipeline safety.

In consideration of the foregoing, RSPA amends 49 CFR Parts 190, 191, 192, 193, 195, and 199 as follows:

PART 190—[AMENDED]

1. The authority citation for Part 190 continues to read as follows:

Authority: 33 U.S.C. 1321; 49 U.S.C. 5101-5127, 60101 et seq.; and 49 CFR 1.53.

2. Paragraph (a) of §190.7 is revised to read as follows:

§190.7 Subpoenas; witness fees.

(a) The Administrator, RSPA, the Chief Counsel, RSPA, or the official designated by the Administrator, RSPA, to preside over a hearing convened in accordance with this part, may sign and issue subpoenas individually on their own initiative or, upon request and adequate showing by any person participating in the proceeding that the information sought will materially advance the proceeding.

* * * * *

3. Paragraph (a) of §190.203 is revised to read as follows:

§190.203 Inspections.

(a) Officers, employees, or agents authorized by the Associate Administrator for Pipeline Safety, RSPA, upon presenting appropriate credentials, are authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties are relevant to determining the compliance of such persons with the requirements of 49 U.S.C. 60101 et seq., or regulations or orders issued thereunder.

* * * * *

4. The introductory text of §190.209 is revised to read as follows:

§190.209 Response options.

Within 30 days of receipt of a notice of probable violation, the respondent shall respond to the Regional Director who issued the notice in the following way:

* * * * *

PART 191—[AMENDED]

1. The authority citation for Part 191 continues to read as follows:

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, and 60124; and 49 CFR 1.53.

§191.21 [Amended]

2. The heading of the chart in §191.21 is amended to remove the phrase "APPROVED THROUGH MARCH 31, 1986."

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53.

2. Paragraph (b)(5) of §192.16 is revised to read as follows:

§192.16 Customer notification.

* * * * *

(b) * * *

(5) The operator (if applicable), plumbing contractors, and heating contractors can assist in locating, inspecting, and repairing the customer's buried piping.

3. Paragraph (b)(2) of §192.107 is revised to read as follows:

§192.107 Yield strength (S) for steel pipe.

(b) ***

(2) If the pipe is not tensile tested as provided in paragraph (b)(1) of this section, 24,000 p.s.i.

4. Paragraph (c)(5) of §192.614 is revised to read as follows:

§192.614 Damage prevention program.

(c) ***

(5) Provide for temporary marking of buried pipelines in the area of excavation activity before the activity begins, except in emergency situations.

5. Appendix A of part 192 is amended by revising paragraphs II. C (1), (2), (9) and (10), II. E (1) and II. F (1) to read as follows:

Appendix A To Part 192—Incorporated by Reference

II. Documents incorporated by reference. (Numbers in parentheses indicate applicable editions.)

C. ***

(1) ASTM Designation: A 53 "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless" (A53-96).

(2) ASTM Designation A 106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A106-95).

(9) ASTM Designation D638 "Standard Test Method for Tensile Properties of Plastics" (D638-96).

(10) ASTM Designation D2513 "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing and Fittings" (D2513-96a).

E. ***

(i) MSS SP44-96 "Steel Pipe Line Flange" (includes 1996 errata) (1996).

F. ***

(1) NFPA 30 "Flammable and Combustible Liquids Code" (1996).

PART 193—[AMENDED]

1. The authority citation for Part 193 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53

2. Paragraph (d)(1)(i) of §193.2059 is revised to read as follows:

§193.2059 Flammable vapor-gas dispersion protection.

(d) ***

(1) ***

(i) The rate of vaporization is not less than the sum of flash vaporization and vaporization from boiling by heat transfer from contact surfaces during the time necessary for spill detection, instrument response, and automatic shutdown by the emergency shutdown system, but not less than 10 minutes, plus, in the case of impounding systems for LNG storage tanks with side or bottom penetrations, the time necessary for the liquid level in the tank to reach the level of the penetration or equilibrate with the liquid impounded assuming failure of the internal shutoff valve.

3. Appendix A to Part 193 is amended by revising paragraphs II.E(1), II.G(1), to read as follows:

Appendix A To Part 193—Incorporation By Reference

II. Documents Incorporated by Reference. (Numbers in Parentheses Indicate Applicable Editions.)

E. ***

1. ASME/ANSI B31.3 "Process Piping" (1996)—Includes 1996 Addenda.

G. ***

1. NFPA 30 "Flammable and Combustible Liquids Code" (1996)

§199.17 Retention of samples and retesting.

(a) Samples that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days as required by the DOT Procedures. Within this 365-day period, the employee or the employee's representative, the operator, the Administrator, or, if the operator is subject to the jurisdiction of a state agency, the state agency may request that the laboratory retain the sample for an additional period. If, within the 365-day period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request, the sample may be discarded following the end of the 365-day period.

* * * * *

Issued in Washington, DC on January 27, 1998.

Kelley S. Coyner,
Acting Administrator.

[FR Doc. 98-2898 Filed 2-13-98; 8:45 am]

BILLING CODE 4910-60-P

Docket No. PS-153; Amdt. [REDACTED]

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR PARTS 191, 192, 193, 194, 195

[Docket PS-153; Amdt. [REDACTED]; 192-85; 193-16; 194-3; 195-63.]
RIN 2137-AC98

Metric Equivalents

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the pipeline safety regulations to provide metric equivalents. The metric equivalents are being provided for informational purposes only. Operators would continue to use the English measures for purposes of compliance and enforcement. No changeover to the metric system of measurement is being contemplated at this time. This may be reconsidered in the future.

DATES: Effective July 13, 1998.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366-6205, or by e-mail at marvin.fell@rspa.dot.gov regarding the subject matter of this final rule or regarding copies of this final rule and other material in the docket.

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order 12770, titled "Metric Usage in the Federal Government" (July 25, 1991), requires Federal agencies to use metric measures in their business-related activities as a means to implement the metric system of measures as the preferred system of weights and measures for the United States. ¹ In order to explore its responsibilities under this Executive Order, RSPA published an Advance Notice of Proposed Rulemaking (ANPRM) on October 23, 1996 (61 FR 55069). RSPA also held a public meeting on January 10, 1997 in Dallas, Texas. On March 11, 1997, RSPA published an additional notice seeking further comment on the metrication issue, particularly on the publication of metric equivalents for all numerical measures in the pipeline safety regulations. After considering the public comments to the notice and the opinions expressed at the public meeting, RSPA published a Notice of Proposed Rulemaking (NPRM) on December 29, 1997 (62 FR 67602-67607).

¹ Section 2(a) of Executive Order 12770 states that "[t]he head of each executive department and

agency shall use * * * the metric system of measurement in Federal Government procurements, grants and other business-related activities. Other business-related activities include all use of measurement units in agency programs and functions relative to trade, industry, and commerce."

In its October 23, 1996, Notice of Public Meeting, RSPA requested comments on seven questions. These questions concerned the best method for providing metric conversion and the cost impact of conversion on the pipeline industry, including the impact on small entities. The majority of respondents were pipeline operators who opposed metric-only regulations. As an alternative, they favored providing metric equivalents. They cited the increased costs that could result from metric conversion with no increase in safety. Some operators contended that metric-only regulations might adversely impact small entities by imposing training and administrative costs that would not contribute to pipeline safety. A few commenters were in favor of metric only regulations.

RSPA received 13 comments to its NPRM, including two from individuals involved in metrication issues, three trade associations representing propane transporters and natural gas distribution and transmission operators, and eight hazardous liquid and gas pipeline operators. There was near unanimous agreement with RSPA's proposal to provide metric equivalents while maintaining English as the measure to be used for compliance. Several operators stated that requiring a metric only rulemaking would significantly add to compliance costs without adding any safety benefits. However, two commenters suggested that operators be able to choose whether to comply with metric or English measures. RSPA believes that these two commenters have a good point. RSPA would like to hear from any operator who would like to comply in metric rather than English. RSPA believes that this should add little to the government compliance costs.

The NPRM proposed displaying the metric measurement first, followed by the English equivalent in parentheses.

The comment cited most frequently by commenters is that since English will remain the measure for compliance purposes it would be appropriate to present the English measure first with the metric in parentheses. RSPA concurs with this comment. Therefore, RSPA will present all English measures with metric measures following in parentheses.

Several commenters noted that RSPA in its NPRM was not consistent in its use of significant figures and that RSPA use the American Society for Testing and Material (ASTM) Standard for Metric Practice. RSPA concurs with this suggestion in its final rule. A few commenters noted where RSPA had either overlooked a conversion or made errors in the conversion. RSPA has made the appropriate corrections. Two comments were received that a conversion was made on regulations that have expired. RSPA will remove those regulations next time it updates its regulations.

By providing English measures and metric equivalents in its pipeline safety regulations, RSPA provides the benefit of increasing public understanding of the metric system, the goal of Executive Order 12770. Providing metric equivalents also meets the requirement that "metric usage shall not be required to the extent that such use is impractical or cause significant inefficiencies or loss of markets to United States firms." (Executive Order 12770 of July 25, 1991).

A complete conversion to the metric system would prove extremely costly to pipeline operators because most pipelines were designed using English measures. Converting these pipelines to metric-only measures would be a very time-consuming process involving considerable expenditure, including educating pipeline employees in use of the metric system.

One pipeline operator noted in its comments that the metrication process in pipeline safety dates to 1978 when sections 192.121 and 192.123 were amended to include both English and metric measures. No changeover to the metric system of measurement is being contemplated at this time. This may be reconsidered in the future.

On May 4, 1998 at its joint meeting of the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC), the two Congressionally mandated advisory committees, OPS presented details concerning its metric equivalents NPRM and the summary of the comments received. These two committees voted overwhelming approval for OPS's metric equivalency proposal with one recommended change. This was that the metric equivalent be placed in parentheses after the English measure. There was one dissenting vote. The dissenter wanting the English measure in parentheses.

II. Regulatory Analyses and Notices

A. The Department of Transportation (DOT) does not consider this action to be a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1994) and does not consider this action significant under DOT's regulatory policies and procedures (44 FR 1103; February 26, 1979). Therefore, this rulemaking was not reviewed by the Office of Management and Budget.

Because this proposed change to the regulations providing metric equivalents for all English measures is for informational and educational purposes only, and imposes no new requirements on pipeline operators, it will have no economic impact. Therefore, no regulatory evaluation is necessary.

B. Regulatory Flexibility Act

As discussed above this rule has no economic impact. Therefore, I certify pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this rulemaking action will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12612

RSPA has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 (52 FR 41685). RSPA has determined that the action does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

D. Paperwork Reduction Act

This rule change has no impact on the amount of paperwork required by these regulations.

E. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either State or local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects

49 CFR Part 191

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

Section	Remove	Add
192.3 Definitions:		
Exposed pipeline.....	15 feet.....	15 feet (4.6 meters).
Gulf of Mexico and its inlets.	15 feet.....	15 feet (4.6 meters).
Hazard to navigation.....	12 inches.....	12 inches (305 millimeters).
	15 feet.....	15 feet (4.6 meters).
Petroleum gas.....	1434 kPa (208 psig) at 38 deg. C (100 deg. F).	208 psi (1434 kPa) gage at 100 deg. F (38 deg. C).
192.5(a)(1).....	220 yards.....	220 yards (200 meters).
	1-mile.....	1-mile (1.6 kilometers).
192.5(b)(3)(ii).....	100 yards.....	100 yards (91 meters).
192.5(c)(1).....	220 yards.....	220 yards (200 meters).
192.5(c)(2).....	220 yards.....	220 yards (200 meters).
192.55(c).....	6,000 p.s.i.....	6,000 p.s.i. (41 MPa).
192.105(a).....	Pounds per square inch gauge. Pounds per square inch.	Pounds per square inch (kPa) gage. Pounds per square inch (kPa).
	Inches.....	Inches (millimeters).
192.107(b)(2).....	24,000 p.s.i.....	24,000 p.s.i. (165 MPa).
192.109(b).....	20 inches (twice)	20 inches (508 millimeters).
192.113.....	4 inches (twice).	4 inches (102 millimeters).
192.115 table.....	Fahrenheit.....	Fahrenheit (Celsius).
	250.....	250 deg.F (121 deg.C).
	300.....	300 deg.F (149 deg.C).
	350.....	350 deg.F (177 deg.C).
	400.....	400 deg.F (204 deg.C).
	450.....	450 deg.F (232 deg.C).
192.121.....	23 deg.C (73 deg.F).	73 deg.F (23 deg.C).
	38 deg.C (100 deg.F).	100 deg.F (38 deg.C).
	49 deg.C (120 deg.F).	120 deg.F (49 deg.C).
	60 deg.C (140 deg.F).	140 deg.F (60 deg.C).
	75,842 kPa (11,000 psi).	11,000 psi (75,842 kPa).
192.123(b)(1).....	-29 deg.C (-20	-20 deg.F (-20

192.151(c) (2)	1 1/4\ inch.....	millimeters). 1 1/4\ inch (32 millimeters).
	4-inch.....	4-inch (102 millimeters).
	6-inch.....	6-inch (152 millimeters).
192.153(d)	100 p.s.i.g.....	100 p.s.i. (689 kPa) gage.
	3 inches.....	3 inches (76 millimeters)
192.163(b) (1)	2 inches.....	2 inches (51 millimeters).
192.163(d)	200 feet.....	200 feet (61 meters).
192.167(a) introductory text.	1,000 horsepower.	1,000 horsepower (746 kilowatts).
192.167(a) (4) (iii)	500 feet.....	500 feet (153 meters).
192.175(b)	$C = (3DxPx F / 1,000)$.	$C = (DxPx F / 48.33)$ $(C = (3DxPx F / 1,000))$.
	Inches (twice)...	Inches (millimeters).
	p.s.i.g.....	p.s.i. (kPa) gage.
192.177(a) (1)	1,000 p.s.i.g. (twice).	1,000 p.s.i. (7 MPa) gage.
	(feet).....	feet (meters).
	25.....	25 (7.6).
	100.....	100 (31).
192.179(a) (1)	2 1/2\ miles.....	2 1/2\ miles (4 kilometers).
192.179(a) (2)	4 miles.....	4 miles (6.4 kilometers).
192.179(a) (3)	7 1/2\ miles.....	7 1/2\ miles (12 kilometers).
192.179(a) (4)	10 miles.....	10 miles (16 kilometers).
192.183(c)	10 inch.....	10 inch (254 millimeters).
192.187(a) introductory text.	200 cubic feet...	200 cubic feet (5.7 cubic meters).
192.187(a) (1)	4 inches.....	4 inches (102 millimeters).
192.187(b) introductory text.	75 cubic feet....	75 cubic feet (2.1 cubic meters).
	200 cubic feet...	200 cubic feet (5.7 cubic meters).
192.197(a) introductory text.	60 p.s.i.g.....	60 p.s.i. (414 kPa) gage.
192.197 (a) (4)	2 inches	2 inches (51 millimeters).
192.197(b)	60 p.s.i.g.....	60 p.s.i. (414 kPa) gage.
192.197(c) introductory text.	60 p.s.i.g.....	60 p.s.i. (414 kPa) gage.
192.197(c) (1)	60 p.s.i.g. (3 times).	60 p.s.i. (414 kPa) gage.
192.197(c) (3)	125 p.s.i.g.....	125 p.s.i. (862 kPa) gage.
192.201(a) (2) (i)	60 p.s.i.g.....	60 p.s.i. (414 kPa)

192.201(a) (2) (ii).....	12 p.s.i.g.....	gage. 12 p.s.i. (83 kPa)
	60 p.s.i.g.....	gage. 60 p.s.i. (414 kPa)
	6 p.s.i.g.....	gage. 6 p.s.i. (41 kPa)
192.201(a) (2) (iii).....	12 p.s.i.g.....	gage. 12 p.s.i. (83 kPa)
192.203(b) (3).....	400 deg. F.....	400 deg. F (204 deg. C).
192.229(d) (2) (ii).....	2 inches.....	2 inches (51 millimeters).
192.241(b) (1).....	6 inches.....	6 inches (152 millimeters).
192.283(b) (3).....	5.0 mm (0.20 in).	0.20 in (5.0 mm).
192.283(b) (4).....	102 mm (4 in)....	4 inches (102 mm).
192.283(b) (5).....	102 mm (4 in)....	4 inches (102 mm).
	38 deg. C (100 deg. F).	100 deg. F (38 deg. C).
192.309(b) (3) (i).....	one-quarter inch.	1/4 inch (6.4 millimeters).
	12 3/4 inches...	12 3/4 inches (324 millimeters).
192.309(b) (3) (ii).....	12 3/4 inches...	12 3/4 inches (324 millimeters).
192.313(a) (3) (ii).....	12 inches.....	12 inches (305 millimeters).
192.313(c).....	2 inches.....	2 inches (51 millimeters).
	1 inch.....	1 inch (25 millimeters).
192.315(b) (3).....	16 inches.....	16 inches (406 millimeters).
192.319(c).....	12 feet.....	12 feet (3.7 meters).
	200 feet.....	200 feet (61 meters).
	15 feet (twice)...	15 feet (4.6 meters).
	36 inches.....	36 inches (914 millimeters).
	18 inches.....	18 inches (457 millimeters).
192.321(d).....	0.090 inch.....	0.090 inch (2.29 millimeters).
	0.875 inch.....	0.875 inch (22.3 millimeters).
	0.062 inch.....	0.062 inch (1.58 millimeters).
192.325(a).....	12 inches.....	12 inches (305 millimeters).
192.327(a) table.....	Inches.....	Inches (Millimeters).
	30.....	30 (762).
	18.....	18 (457).
	36 (twice).....	36 (914).
	24 (twice).....	24 (610).
192.327(b).....	24 inches.....	24 inches (610 millimeters).
192.327(d) introductory text.	24 inches.....	24 inches (610 millimeters).

	10 p.s.i.g.....	10 p.s.i. (69 kPa) gage.
	90 p.s.i.g.....	90 p.s.i. (621 kPa) gage.
192.511(b).....	1 p.s.i.g.....	1 p.s.i. (6.9 kPa) gage.
	40 p.s.i.g.....	40 p.s.i. (276 kPa) gage.
	50 p.s.i.g.....	50 p.s.i. (345 kPa) gage.
192.511(c).....	40 p.s.i.g.....	40 p.s.i. (276 kPa) gage.
	90 p.s.i.g.....	90 p.s.i. (621 kPa) gage.
192.513(c).....	50 psig.....	50 p.s.i. (345 kPa) gage.
192.513(d).....	38 deg.C (100 deg.F).	100 deg.F (38 deg.C).
192.557(c).....	10 p.s.i.g.....	10 p.s.i. (69 kPa) gage.
192.557(d) (3).....	(inches) (twice). 3 to 8..... 10 to 12..... 14 to 24..... 30 to 42..... 48..... 54 to 60.....	inches (millimeters). 3 to 8 (76 to 203). 10 to 12 (254 to 305). 14 to 24 (356 to 610). 30 to 42 (762 to 1067). 48 (1219). 54 to 60 (1372 to 1524).
	0.075 (3 times)..	0.075 (1.91).
	0.08 (4 times)...	0.08 (2.03).
	0.09 (5 times)...	0.09 (2.29).
	0.065 (twice)....	0.065 (1.65).
	0.07 (twice).....	0.07 (1.78).
192.557(d) (4).....	11,000 p.s.i.....	11,000 p.s.i. (76 MPa) gage.
	31,000 p.s.i.....	31,000 p.s.i. (214 MPa) gage.
192.612(b) (2).....	500 yards.....	500 yards (457 meters).
	200 yards.....	200 yards (183 meters).
192.612(b) (3).....	36 inches.....	36 inches (914 millimeters).
	18 inches.....	18 inches (457 millimeters).
192.619(a) (1) (ii).....	324 mm (12 3/4 inches). 179 kPa (200 psig).	12 3/4 inches (324 mm). 200 p.s.i. (1379 kPa).
192.619(a) (2) (ii).....	100 p.s.i.g.....	100 p.s.i. (689 kPa) gage.
192.621(a) (i).....	60 p.s.i.g (twice).	60 p.s.i. (414 kPa) gage.
192.621(a) (3).....	25 p.s.i.g.....	25 p.s.i. (172 kPa) gage.

192.707(d)(1).....	one inch.....	1 inch (25 millimeters).
	one-quarter inch.	1/4 inch (6.4 millimeters).
192.715(b)(3).....	1/8-inch.....	1/8 inch (3.2 millimeters).
192.717(a)(3).....	40,000 psi.....	40,000 p.s.i. (276 MPa) gage.
192.736(a)(2).....	1,000 horsepower.	1,000 horsepower (746 kW).
192.749(a).....	200 cubic feet...	200 cubic feet (5.6 cubic meters).
192.753(a) introductory text.	25 p.s.i.g.....	25 p.s.i. (172 kPa) gage.
192.753(b).....	25 p.s.i.g.....	25 p.s.i. (172 kPa) gage.
Appendix B (II)(A).....	2 inches (twice).	2 inches (51 millimeters).
Appendix B (II)(B).....	4 inches (twice).	4 inches (102 millimeters).
Appendix B (II)(D).....	24,000 p.s.i.....	24,000 p.s.i. (165 MPa).
Appendix C (I).....	12 inches.....	12 inches (305 millimeters).
	1/8-inch.....	1/8-inch (3.2 millimeters).
Appendix C (III).....	8 inches.....	8 inches (203 millimeters).
Appendix C (III)(1).....	2 inches.....	2 inches (51 millimeters).

PART 193--[AMENDED]

1. The authority citation for part 193 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53.

2. In part 193 for the following sections remove the numbers and words in the middle column and add the numbers and words in the third column in their place as follows:

Section	Remove	Add
193.2057 (d).....	Btu/ft.\2\ hour..	Btu/ft \2\ hour (watts/m \2\).
	1,600.....	1,600 (5047).
	4,000 (twice)....	4,000 (12600).
	6,700 (twice)....	6,700 (21100).
	10,000.....	10,000 (31500).
193.2059(c)(2).....	4.5 miles per hour.	4.5 miles/hour (7.2 km/hour).
193.2061(a).....	70,000 gallons...	70,000 gallons (265,000 liters).
193.2061(b)(1).....	70,000 gallons...	70,000 gallons

		(265,000 liters).
	2 feet.....	2 feet (610 millimeters).
193.2061 (e) (1).....	100 miles.....	100 miles (161 kilometers).
193.2061 (e) (3).....	10 miles.....	10 miles (16 kilometers).
193.2061 (f) (2).....	30 inches.....	30 inches (762 millimeters).
193.2061 (f) (3).....	one mile.....	1 mile (1.6 kilometers).
	60 inches.....	60 inches (1.5 meters).
193.2067 (b) (1).....	70,000 gallons...	70,000 gallons (265,000 liters).
193.2067 (b) (2) (i).....	200 miles.....	200 miles (322 kilometers).
193.2133(b).....	1 cubic foot.....	1 cubic foot (.035 cubic meters).
	Per square foot..	Per square foot (per square meter).
193.2153(a).....	24 inches.....	24 inches (610 millimeters).
193.2191.....	5,000 barrels....	5,000 barrels (795 cubic meters).
193.2195(d).....	70,000 gallons...	70,000 gallons (265,000 liters).
193.2209(a).....	70,000 gallons...	70,000 gallons (265,000 liters).
193.2209(b).....	70,000 gallons...	70,000 gallons (265,000 liters).
193.2211(a).....	15 psig.....	15 psi (103 kPa) gage.
193.2211(b).....	15 psig.....	15 psi (103 kPa) gage.
193.2233(b).....	50 feet.....	50 feet (15 meters).
193.2321(a).....	2 inches (twice).	2 inches (51 millimeters).
193.2321(d).....	15 psig.....	15 psi (103 kPa) gage.
193.2321(e).....	15 psig.....	15 psi (103 kPa) gage.
193.2327(a).....	15 psig.....	15 psi (103 kPa) gage.
193.2327(b).....	15 psig.....	15 psi (103 kPa) gage.
193.2519(b).....	70,000 gallons...	70,000 gallons (265,000 liters).

PART 194--[AMENDED]

1. The authority citation for part 194 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321 (j)(1)(C), (j)(5) and (j)(6); sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.53.

2. In part 194, for the following sections remove the numbers or words in the middle column and add the numbers or words in the third column in their place as follows:

Section	Remove	Add
194.5 Definitions, Barrel.....	42 United States gallons.	42 United States gallons (159 liters).
	60 degrees Fahrenheit.	60 deg.Fahrenheit (15.6 deg.Celsius).
High volume area.....	20 inches.....	20 inches (508 millimeters).
194.101 (b) (1).....	6\5/8\ inches....	6\5/8\ inches (168 millimeters).
	10 miles.....	10 miles (16 kilometers).
194.101(b) (1) (i).....	1,000 barrels....	1,000 barrels (159 cubic meters).
194.101(b) (2) (ii).....	6\5/8\ inches....	6\5/8\ inches (168 millimeters).
	10 miles.....	10 miles (16 kilometers).
194.103(c) introductory text..	6\5/8\ inches....	6\5/8\ inches (168 millimeters).
	10 miles.....	10 miles (16 kilometers).
194.103(c) (1).....	1,000 barrels....	1,000 barrels (159 cubic meters).
194.103(c) (4).....	five-mile.....	5 mile (8 kilometer).
194.103(c) (5).....	one-mile.....	1 mile (1.6 kilometer).
194.105(b) introductory text..	barrels.....	barrels (cubic meters).
194.105(b) (1).....	barrels.....	barrels (cubic meters).
194.105(b) (2).....	barrels.....	barrels (cubic meters).
194.105(b) (3).....	barrels.....	barrels (cubic meters).
Appendix A, Section 9 (..) (2) (i).	five miles.....	5 miles (8 kilometers).
Appendix A, Section 9 (h) (2) (ii).	one mile.....	1 mile (1.6 kilometer).

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. In part 195, for the following sections, remove the numbers or words in the middle column and add the numbers or words in the third column in their place as follows:

195.250.....	12 inches (3 times).	12 inches (305 millimeters).
	2 inches.....	2 inches (51 millimeters).
195.260(e).....	100 feet.....	100 feet (30 meters).
195.302 (c) (2) (i) (A).....	Mileage.....	Mileage (length).
195.302 (c) (2) (i) (B).....	Mileage.....	Mileage (length)
195.302(c) (2) (ii).....	Mileage.....	Mileage (length)
195.306(b) (2).....	300 feet.....	300 feet (91 meters).
195.306(c) (2).....	300 feet.....	300 feet (91 meters).
195.310(b) (9).....	100 feet.....	100 feet (30 meters).
195.406(a) (1) (ii).....	323.8 mm (12 3/4 in).	12 3/4 inch (324 mm).
	1379 kPa (200 psig).	200 p.s.i. (1379 kPa) gage.
195.410(a) (2) (i).....	One inch.....	1 inch (25 millimeters).
	One-quarter inch.	1/4-inch (6.4 millimeters).
195.413(a).....	114.3 mm (4 1/2 in).	4 1/2 inches (114 mm).
195.413(b) (2).....	500 yards.....	500 yards (457 meters).
	200 yards.....	200 yards (183 meters).
195.413(b) (3).....	36 inches.....	36 inches (914 millimeters).
	18 inches.....	18 inches (457 millimeters).
195.424(b) (3) (ii).....	50 p.s.i.g.....	50 p.s.i. (345 kPa) gage.

Issued in Washington, D.C. on July 7, 1998.
 Kelley S. Coyner,
 Deputy Administrator, Research and Special Programs Administration.
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