

(deliverables and construction material), due to the serious human health and environmental risks related to its use. Executive Order 13423, section 3, paragraph (a) requires that the heads of agencies reduce or eliminate the acquisition and use of toxic or hazardous chemicals. Executive Order 13514 requires that the heads of agencies are responsible for “reducing and minimizing the quantity of toxic and hazardous chemicals and materials acquired, used, or disposed of.”

223.7302 Authorities.

(a) Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management.

(b) Executive Order 13514 of October 5, 2009, Federal Leadership in Environmental, Energy, and Economic Performance.

223.7303 Prohibition.

(a) Except as provided in 223.7304 and 223.7305, no contract may include a specification or standard that results in a deliverable or construction material containing more than 0.1 percent hexavalent chromium by weight in any homogeneous material in the deliverable or construction material where proven substitutes are available that provide acceptable performance for the application.

(b) This prohibition is in addition to any imposed by the Clean Air Act regardless of the place of performance.

223.7304 Exceptions.

The prohibition in 223.7303 does not apply to—

(a) Legacy systems and their related parts, subsystems, and components that already contain hexavalent chromium. However, alternatives to hexavalent chromium shall be considered by the appropriate official during system modifications, follow-on procurements of legacy systems, or maintenance procedure updates; and

(b) Additional sustainment related contracts (e.g., parts, services) for a system in which use of hexavalent chromium was previously approved.

223.7305 Authorization and approval.

(a) The prohibition in 223.7303 does not apply to critical defense applications if no substitute can meet performance requirements. The DoD policy of April 8, 2009, “Minimizing the Use of Hexavalent Chromium,” contains requirements for weighing hexavalent chromium versus substitutes. DoD Program Managers must consider the following factors—

(1) Cost effectiveness of alternative materials or processes;

(2) Technical feasibility of alternative materials or processes;

(3) Environment, safety, and occupational health risks associated with the use of the hexavalent chromium or substitute materials in each specific application;

(4) Achieving a DoD Manufacturing Readiness Level of at least eight for any qualified alternative;

(5) Materiel availability of hexavalent chromium and the proposed alternatives over the projected life span of the system; and

(6) Corrosion performance difference of alternative materials or processes as determined by agency corrosion subject matter experts.

(b) However, unless an exception in 223.7304 applies, the incorporation of hexavalent chromium in items acquired by DoD shall be specifically authorized at a level no lower than a general or flag officer or a member of the Senior Executive Service from the Program Executive Office or equivalent level, in coordination with the component Corrosion Control and Prevention Executive. Follow the procedures in PGI 223.7305.

223.7306 Contract clause.

Unless an exception in 223.7304 applies, or use has been authorized in accordance with 223.7305, use the clause at 252.223–7008, Prohibition of Hexavalent Chromium, in solicitations and contracts for supplies, maintenance and repair services, or construction.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Add section 252.223–7008 as follows:

252.223–7008 Prohibition of Hexavalent Chromium.

As prescribed in 223.7306, use the following clause:

Prohibition of Hexavalent Chromium (MAY 2011)

(a) *Definitions.* As used in this clause—
Homogeneous material means a material that cannot be mechanically disjointed into different materials and is of uniform composition throughout.

(1) Examples of homogeneous materials include individual types of plastics, ceramics, glass, metals, alloys, paper, board, resins, and surface coatings.

(2) Homogeneous material does not include conversion coatings that chemically modify the substrate. *Mechanically disjointed* means that the materials can, in principle, be separated by mechanical actions such as unscrewing, cutting, crushing, grinding, and abrasive processes.

(b) *Prohibition.* (1) Unless otherwise specified by the Contracting Officer, the

Contractor shall not provide any deliverable or construction material under this contract that—

(i) Contains hexavalent chromium in a concentration greater than 0.1 percent by weight in any homogenous material; or

(ii) Requires the removal or reapplication of hexavalent chromium materials during subsequent sustainment phases of the deliverable or construction material.

(2) This prohibition does not apply to hexavalent chromium produced as a by-product of manufacturing processes.

(c) If authorization for incorporation of hexavalent chromium in a deliverable or construction material is required, the Contractor shall submit a request to the Contracting Officer.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts for supplies, maintenance and repair services, or construction materials.

(End of clause)

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 195

[Docket PHMSA–2008–0186; Amdt. 195–96]

RIN 2137–AE36

Pipeline Safety: Applying Safety Regulations to All Rural Onshore Hazardous Liquid Low-Stress Lines

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

ACTION: Final rule.

SUMMARY: PHMSA is amending its pipeline safety regulations to apply safety regulation to rural low-stress hazardous liquid pipelines that were not covered previously by safety regulations. This change complies with a mandate in the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act).

DATES: This final rule takes effect October 1, 2011.

FOR FURTHER INFORMATION CONTACT: For technical contents of the final rule contact Mike Israni by phone at 202–366–4571 or by e-mail at Mike.Israni@dot.gov. For all other information contact Tewabe Asebe by phone at 202–366–4595 or by e-mail at tewabe.asebe@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Until 2008, a hazardous liquid pipeline operating at low-stress in a rural area was not regulated under Federal pipeline safety regulations in 49 CFR part 195 unless it crossed a commercially navigable waterway. Section 195.2 defines a "rural area" as one outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area, such as a subdivision, a business or shopping center, or community development.

The PIPES Act was signed into law on December 29, 2006, (Pub. L. 109–468). Section four of the PIPES Act (codified at 49 U.S.C. 60102(k)) required PHMSA to "issue regulations subjecting low-stress hazardous liquid pipelines to the same standards and regulations as other hazardous liquid pipelines." The PIPES Act also stated that the new regulations could be issued in phases.

Implementation of the PIPES Act Mandate

PHMSA decided to implement the PIPES Act mandate in phases, in part because PHMSA did not have complete data on the extent of rural low-stress pipelines that would be covered by the statutory mandate. Phase one, through a final rule published on June 3, 2008, (73 FR 31634), applied full Part 195 regulation to higher-risk, larger-diameter rural low-stress pipelines (i.e., those low-stress pipelines with a diameter of 8 5/8 inches or greater located in or within one-half mile of an unusually sensitive area (USA)). (These requirements are in 49 CFR 195.12.) These are the rural low-stress pipelines that have more potential to cause harm to USAs. These were also the rural low-stress pipelines on which PHMSA had the most information to prepare a regulatory cost/benefit evaluation. PHMSA planned to regulate all remaining rural low-stress pipelines (i.e., smaller-diameter—less than 8 5/8 inches diameter—rural low-stress pipelines located in or within one-half mile of a USA and all rural low-stress pipelines, of any diameter, located outside the one-half mile USA buffer) once PHMSA had more complete information on the extent of these unregulated rural low-stress pipelines. Phase one also applied reporting requirements in Subpart B of Part 195 to all rural low-stress pipelines (§ 195.48). This data was necessary for PHMSA to complete the regulatory evaluation for the extension of all safety requirements to the remaining rural low-stress pipelines in phase two.

Surveys

Because PHMSA did not have adequate information on the number of operators with rural low-stress pipelines, or on the total mileage of these lines in service, we initiated the following actions:

(1) We revised the Pipeline Safety Regulations to require operators of any low-stress line (including those rural low-stress lines not brought under safety regulations) to comply with the annual reporting requirements and the incident reporting requirements of Part 195. This was part of phase one, as discussed above.

(2) On July 31, 2008, (73 FR 44800) OMB Control Number 2137–0623, PHMSA published in the **Federal Register** a notice of OMB-approved survey asking each operator of a rural low-stress hazardous liquid pipeline for voluntary information concerning the mileage and characteristics of these pipelines to assess the costs of subjecting rural low-stress pipeline mileage to Part 195 regulation.

(3) Based on the information received in response to the notice, PHMSA conducted two follow-up inquiries: (1) A request for information from operators who operate rural low-stress lines to determine the potential operating costs they were likely to incur to bring these unregulated lines into compliance with Part 195 regulation; and (2) a request to states with the majority of rural low-stress lines to identify any incident data the state may have collected through the years.

Phase Two—Notice of Proposed Rulemaking

With the information PHMSA gathered, we moved to phase two to complete the requirement of the PIPES Act and to apply Part 195 safety requirements to all rural low-stress pipelines not included in the phase one rule. A Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on June 22, 2010, (75 FR 35366) that proposed to extend Part 195 safety requirements to rural low-stress pipelines of any diameter located more than one-half mile from a USA and those less than 8 5/8 inches in diameter located in or within one-half mile of a USA.

The phase one rule established compliance deadlines for the rural low-stress pipelines that it addressed. The phase two NPRM proposed no changes to these phase one deadlines, but proposed new compliance deadlines to apply the requirements to the phase two rural low-stress pipelines proposed for regulation. In addition, PHMSA

proposed to define the scope of the "could affect" buffer for application of the integrity management (IM) requirements in § 195.452 to the phase two pipelines. To codify the compliance dates and requirements, we proposed to define three "categories" of rural low-stress pipelines subject to the requirements of § 195.12. These were as follows:

- Category 1: Those rural low-stress pipelines that were covered under the phase one rule;
- Category 2: Rural low-stress pipelines of smaller diameter (less than 8 5/8 inches diameter) located in or within one-half mile of a USA (which would be subject to all Part 195 requirements including IM requirements); and
- Category 3: All other rural low-stress pipelines that were not included in phase one. Category 3 lines would fall outside the defined "could affect" buffer for application of IM requirements.

Integrity Management

Section 195.452 addresses IM requirements for hazardous liquid pipelines. Under the requirements of that section, operators must take additional actions for each pipeline segment that could affect a high consequence area (HCA). PHMSA has defined HCAs as populated areas, commercially navigable waterways and USAs. HCAs are identified and displayed on maps available from the NPMS.

To comply with IM requirements, pipeline operators must first determine which segments of their pipeline could affect an HCA. To do this, an operator needs to compare its pipeline's location to the locations of HCAs and determine which segments of the pipeline could affect an HCA if there was a product release from the segment. These comparisons have proven to be considerably more burdensome in practice than PHMSA believed when IM rules were initially established. They involve more than just comparison of maps of pipeline location to maps of HCAs. Operators have had to consider the topography and nature of ground cover around their pipelines to estimate the direction and distance that released product might flow. Operators have also had to consider the potential transport of released product via nearby waterways, including such factors as seasonal variations in flow, the effect of stream turbulence, and their ability to respond to a release and contain further transport of spilled product.

During the phase one rulemaking for rural low-stress pipelines, PHMSA

concluded it would be unnecessarily burdensome to require operators of these pipelines to perform a complete “could affect” analysis to determine which rural low-stress pipeline segments would be subject to IM requirements. Rather, PHMSA adopted a one-half mile buffer around USAs¹ as the “could affect” area (i.e., any rural low-stress pipeline segment covered by the phase one rule within the one-half mile buffer would be subject to IM requirements). PHMSA found it unlikely a “could affect” analysis on a rural low-stress pipeline would result in a larger area than the one-half mile buffer for application of IM requirements. Available data showed that the largest spill on land from a low-stress line covered two acres. An acre is 43,560 square feet. If this spill had been limited to a corridor 35 feet wide over its entire length, it still would not have traveled one-half mile. This data, coupled with the relatively lower pressure of low-stress pipelines, led PHMSA to conclude that a one-half mile buffer was more than adequate for application of IM requirements. In the NPRM, PHMSA proposed to continue to use the one-half mile buffer for phase two because PHMSA believed it would be an adequate “could affect” area that identifies the vast majority (if not all) of rural low-stress pipelines that could affect a USA.

As in phase one, PHMSA also proposed to include an option for pipeline operators to use “could affect” analyses in lieu of the one-half mile buffer to determine which of their smaller-diameter low-stress pipelines would be subject to IM requirements. PHMSA recognized that operators could use this option in circumstances where it is likely the “could affect” analysis would determine that a pipeline segment cannot affect a USA (e.g., where the USA is uphill from the pipeline). Nevertheless, PHMSA concluded it would be unreasonable to exclude this option for rural low-stress pipelines since it can identify instances in which application of IM requirements would be unnecessary.

Economic Burden

The phase one rule allowed operators of pipelines meeting specified criteria to notify PHMSA if they would incur an excessive economic burden in complying with IM assessment requirements. The criteria were designed for rural pipelines that carry

oil from a production facility (e.g., well) and where the pipeline would be abandoned or shut down as a result of the economic burden associated with IM assessments. The phase one rule provided that PHMSA would stay compliance with the IM assessment requirements while it reviews the notification. Based on the outcome of the review, PHMSA may grant the operator a special permit imposing alternative safety requirements in lieu of IM assessments.

For phase two, PHMSA considered extending the economic compliance burden provision to Category 2 pipelines—those smaller diameter rural low-stress pipelines located in or within one-half mile of a USA that would be subject to IM assessment requirements. (Category 3 low-stress pipelines would not be subject to the IM requirements under the NPRM, as described above). PHMSA concluded that this was not necessary because no Category 2 low-stress pipeline would meet the criteria in the economic burden compliance provision (§ 195.12(c)) and concerns about preserving oil production or minimizing risk of alternative transport of crude oil from wells would not apply to these pipelines. Accordingly, we did not propose to extend the economic burden compliance provision to these pipelines in the NPRM.

Pipelines Subject to USCG Regulation

Section 195.1(b)(3) states that Part 195 requirements do not apply to pipelines subject to safety regulations of the United States Coast Guard (USCG). The NPRM noted that this exception had previously applied only to low-stress pipelines subject to USCG regulation and through a drafting error in the phase one final rule, was inadvertently expanded to all pipelines subject to USCG requirements. PHMSA proposed to correct this error.

Public Comments

PHMSA received comments from three trade associations (two of which filed joint comments), one government agency (National Transportation Safety Board, NTSB), one pipeline consultant, and one individual. None of the comments objected to the changes proposed in the NPRM. The American Petroleum Institute (API) and the Association of Oil Pipelines (AOPL), in joint comments, explicitly noted that they did not oppose application of the baseline requirements of Part 195 to all low-stress pipelines and a requirement that rural low-stress pipelines within one-half mile of a USA also be subject to the IM requirements of Part 195. NTSB supported regulating all low-

stress pipelines with requirements graded according to risk. All those commenting suggested some changes, however.

Several comments addressed the scope of the proposed rule. API-AOPL requested that PHMSA clarify that the proposed rule did not apply to gathering or production pipelines or to pipelines excluded from regulation in § 195.1(b). The Independent Petroleum Association of America similarly requested clarification that the proposed requirements do not apply to gathering pipelines. NTSB suggested that the change should include all rural gathering lines and gathering lines in inlets of the Gulf of Mexico. Tracy S. Dahl, who commented on behalf of herself, suggested that the scope should include low-stress gas pipelines such as those associated with coal bed methane gas production.

With the exception of correcting a drafting error associated with low-stress pipelines subject to regulation by the USCG (discussed above), the NPRM proposed no changes to the exclusions listed in § 195.1(b). This section lists the types of pipelines excluded from the requirements of Part 195. The NPRM did not propose any new requirements for gathering pipelines, and thus no requirements applicable to those pipelines may be included in this final rule. Regulation of rural gathering pipelines is governed by § 195.11, which is not affected by this rulemaking. Further, PHMSA notes that Section 4 of the PIPES Act explicitly states, “[t]he regulations issued under this paragraph shall not apply to gathering lines.”² Gas pipelines were not included in the scope of the NPRM and thus no new requirements can be applied to gas pipelines as part of this rulemaking.

API-AOPL specifically requested that PHMSA clarify the exclusion in paragraph (4) of § 195.1(b) applying to “[a] low-stress pipeline that serves refining, manufacturing, or truck, rail, or vessel terminal facilities, if the pipeline is less than one mile long (measured outside facility grounds) and does not cross an offshore area or a waterway currently used for commercial navigation.” API-AOPL noted that PHMSA field personnel have recently informed certain pipeline operators that these segments are part of a larger, non-low-stress pipeline and are thus subject to Part 195, which the associations believe is contrary to the plain language of the regulation. As noted above, the exclusions of § 195.1(b) are not changed

¹ The other component of HCAs (i.e., populated areas) was not affected by the phase one rulemaking and was not included in the phase two NPRM since pipelines in populated areas are not, by definition, in “rural areas” and are already regulated.

² 49 U.S.C. 60102(k)(1), as amended by PIPES Act Section 4.

by this rulemaking, and low-stress inter-facility pipelines meeting these criteria are excluded from regulation under Part 195. However, PHMSA notes that § 195.2 and the PIPES Act both define a low-stress hazardous liquid pipeline to be one “that is operated *in its entirety* at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe” (emphasis added). Inter-facility pipelines operating at less than 20% SMYS that is part of a larger pipeline (i.e., some of which operates at higher stress levels) would not fall under this exclusion. Such inter-facility pipelines would be subject to Part 195. Determining whether particular inter-facility piping is part of a larger pipeline depends on the characteristics of individual installations and the applicability of Part 195 requirements to specific inter-facility lines.

API-AOPL objected to the proposed change to the exception in § 195.1(b)(3) for pipelines subject to regulation by the USCG. API-AOPL contended that this was not an error because the change was included in the phase one NPRM and final rule, had been subject to notice and comment and thus cannot simply be “corrected.” PHMSA disagrees. The entire rulemaking record clearly demonstrates that this was an error in the regulatory language in the phase one rule. API-AOPL is correct that the rewrite of the regulatory language of § 195.1(b) in the phase one NPRM failed to limit this exception to low-stress pipelines and that this omission was repeated in the regulatory language in the final phase one rule. The remainder of the record makes it clear, however, that this change was not intended. The NPRM for the phase one rule stated that PHMSA had

* * * also clarified the language in several of the exceptions from part 195’s coverage. *We have not changed the intent or scope of any of these. We have simply cleaned up some of the language to make the exceptions easier to read*³ (emphasis added).

The NPRM stated elsewhere that, “[t]his proposal will not affect other *exempt low-stress lines*, specifically pipelines subject to the safety regulations of the USCG * * *⁴ (emphasis added). The exception applicable to lines subject to USCG regulation prior to the effective date of the phase one final rule clearly applied only to low-stress pipelines. Further, the PIPES Act required that PHMSA continue to exempt from part 195 those “low-stress hazardous liquid pipelines”

that were subject to USCG safety regulations. Therefore, PHMSA concludes that the record demonstrates the regulatory language in the phase one final rule concerning the exemption for low-stress pipelines subject to USCG regulation was an inadvertent error and that error has been corrected in this final rule.

API-AOPL and the Independent Petroleum Association of America suggested that PHMSA exclude low-stress carbon dioxide (CO₂) pipelines involved in enhanced oil recovery and/or carbon capture and storage. The associations noted that these pipelines pose different risks from petroleum pipelines, that releases from low-stress CO₂ pipelines would not require the cleanup that would be associated with releases from crude oil or refined petroleum product pipelines, and that new requirements on CO₂ lines could have a chilling effect on future investment in such pipelines. PHMSA notes that these factors were not raised in comments on the phase one rule even though the phase one rule applies to rural low-stress CO₂ pipelines. PHMSA never proposed such an exclusion and also considers it inappropriate to exclude some rural low-stress CO₂ pipelines from safety regulation while regulating others (i.e., those subject to the phase one final rule), and has not incorporated the suggested exclusion in this final rule.

API-AOPL also objected to the proposed requirement that a pipeline segment subject to IM requirements must remain subject to those requirements if subsequent changes to USA boundaries result in it being more than one-half mile from a USA. They contended this requirement is inappropriate and unsupported. They stated:

“[i]f future analyses demonstrate that a segment could affect a USA that it previously could not affect, an operator is appropriately required to apply IMP requirements to that segment. Likewise, if a segment no longer could affect a USA, it is only equitable that an operator need not apply the additional protection of such plans to the segment.”

PHMSA would agree if the operator of a rural low-stress pipeline were, indeed, required to analyze its pipelines to determine which segments could affect a USA. They are not. This final rule uses a one-half mile buffer as a surrogate for these expensive and complex analyses, as did the phase one rule. While PHMSA considers this a reasonable surrogate, it is possible, though unlikely, that a pipeline segment slightly less than one-half mile from a USA could not affect that USA and it is similarly possible that a pipeline

segment slightly more than one-half mile distant could affect a USA. Thus, eliminating IM requirements that already apply solely because the distance to a USA has increased above one-half mile is not appropriate. Operators always have the option to perform an analysis to demonstrate that any pipeline segment could not affect a USA, in which case IM requirements need not apply regardless of the distance from a USA. Operators who experience a change in USA boundaries could exercise this option to remove a pipeline segment from IM scope. If the change in USA boundaries is significant (e.g., the USA ceases to exist), demonstrating that a segment could not affect a USA could be a simple analysis. PHMSA has retained in this final rule the requirement that a pipeline segment determined to be subject to IM requirements due to proximity to a USA must remain subject to those requirements if boundary changes result in more than one-half mile separation, absent a demonstration that the segment could not affect a USA.

Thomas Lael Services, L.P., a pipeline consultant, suggested changes to the regulatory language to improve clarity. Specifically, Lael suggested that proposed §§ 195.12(c)(2)(i) and 195.12(c)(3)(i) be modified to refer specifically to the criteria defining the pipeline segments for which identification is required. PHMSA agrees that this change would improve the clarity of the regulatory language and has revised the final rule accordingly.

Lael also suggested that the provision allowing the operator of a Category 1 rural low-stress pipeline to notify PHMSA of undue economic burden should be extended to operators of Category 2 rural low-stress pipelines. Lael noted that revenue is less for these smaller-diameter pipelines while costs are the same, increasing the importance of considering economic burden. Lael cites costs associated with patrolling the pipeline and performing pipe-to-soil potential readings as examples. These requirements, however, are outside the scope of the economic burden provision. That provision allows an operator of a Category 1 rural low-stress pipeline to notify PHMSA if the economic burden of complying with IM assessment requirements, not other provisions as cited by Lael, would be sufficient to cause the operator to shut down its pipeline. The provision is applicable only to pipelines carrying crude oil from a production facility (among other criteria). Pipelines of 8⁵/₈ inches or less nominal outside diameter—the size that would

³ Federal Register, September 6, 2006, 71 FR 52511.

⁴ Federal Register, September 6, 2006, 71 FR 52505.

categorize a rural low-stress pipeline as Category 2—and that carry crude oil from a production facility are, by definition, gathering pipelines. Gathering pipelines, as noted above, are not subject to the provisions of § 195.12 and are not subject to IM requirements. Thus, PHMSA concludes that no change to the economic burden provision is needed.

Lael also suggested that the time allowed for operators to identify Category 2 and 3 rural low-stress pipelines be extended to 12 months from the proposed nine months. Lael noted that this would correct an apparent inconsistency with discussion in the NPRM preamble noting the proposed timeframes were the same as those required in phase one; therefore, 12-month timeframes were being proposed for operators of Category 2 and 3 rural low-stress pipelines in instances where 12 months was required of operators of Category 1 rural low-stress pipelines. There is no inconsistency. The NPRM preamble discussion cited by Lael clearly uses 12 months only as an example. The phase one rule required operators of Category 1 rural low-stress pipelines to identify pipeline segments meeting the criteria in the rule before nine months after the effective date of the phase 1 rule. Nine months is also required for Category 2 and 3 rural low-stress pipelines in this final rule, thus affording the consistency discussed in the NPRM.

Lael also questioned the logic of a statement in the phase two NPRM that available data showed that the largest spill on land from a low-stress pipeline traveled two acres and that this justified a one-half mile buffer as a surrogate for analyses of whether a pipeline segment could affect a USA. Lael noted that an acre is a measure of area rather than a measure of distance. PHMSA agrees that the NPRM statement was unclear about the assumptions we used to conclude that this data demonstrated a one-half mile buffer was adequate. PHMSA considered that a spill covering two acres would need to be limited to 35 feet in width over its entire length if it were to extend one-half mile from the pipeline. We concluded that it was unlikely that a spill would behave in this manner and that based on the data we could conclude that a one-half mile buffer was adequate. PHMSA has revised the discussion in the preamble of this final rule to better explain its reasoning.

API-AOPL raised a number of concerns regarding the draft regulatory analysis and regulatory flexibility (i.e., small business) analysis supporting the NPRM. These included use of data from

parent companies rather than distinct operating subsidiaries in determining whether small businesses could be affected and use of inappropriate data to estimate costs. These comments have been addressed in the final regulatory analysis that is included in the rulemaking docket.

Finally, NTSB suggested that PHMSA should be given sole jurisdiction over offshore pipelines on the outer continental shelf. NTSB noted, in making this suggestion, that regulation of offshore pipelines was outside the scope of this NPRM. PHMSA agrees that changes in PHMSA jurisdiction over offshore pipelines are beyond the scope of this proceeding.

Consideration by Technical Hazardous Liquid Pipeline Safety Standards Committee

On December 3, 2010, PHMSA discussed the proposed rule with the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). The THLPSSC is a statutorily mandated advisory committee that advises PHMSA about the technical feasibility, reasonableness and cost-effectiveness of its proposed regulations. PHMSA discussed the comments received in response to the NPRM (e.g., concerns over effect on pipelines excluded from regulation and on rural gathering pipelines). These comments have been previously discussed in this document.

After careful consideration, the THLPSSC voted unanimously to find the NPRM and supporting regulatory evaluation technically feasible, reasonable, practicable, and cost effective. A transcript of the meeting is available in the docket for this rulemaking.

Final Rule

This final rule revises 49 CFR part 195 to cover: (1) Rural onshore low-stress pipelines with a diameter smaller than 8⁵/₈ inches located in or within one-half mile of a USA and (2) rural onshore low-stress pipelines of any diameter located more than one-half mile from a USA. With the publication of this final rule, and with limited exceptions, all low-stress pipelines regardless of location or size are now subject to the pipeline safety regulations. The final rule continues in place the one-half mile buffer to be used as the “could affect” area for application of IM requirements.

Our phased approach resulted in several distinct groups of rural low-stress pipelines:

- Rural low-stress pipelines that cross navigable waterways. These have historically been subject to the safety

requirements of Part 195. These pipelines were not affected by phase one and are not affected by this rulemaking.

- Rural low-stress pipelines 8⁵/₈ inches or greater in diameter that are located in or within one-half mile of a USA. The requirements of Part 195 were made applicable to these rural pipelines in the phase one rule.

- Rural low-stress pipelines less than 8⁵/₈ inches in diameter that are located in or within one-half mile of a USA. These pipelines are made subject to the safety requirements of Part 195, including the IM requirements in § 195.452, by this final rule.

- Rural low-stress pipelines of any diameter that are located more than one-half mile from a USA. These pipelines are also made subject to the safety requirements of Part 195, excluding the IM requirements in § 195.452, by this final rule.

The phase one rule established a number of compliance deadlines for the rural pipelines it addressed, now referred to as Category 1 rural low-stress pipelines. These deadlines varied from relatively near term (e.g., identifying all pipeline segments subject to the phase one rule by April 3, 2009) to long term (e.g., completing baseline IM assessments by July 3, 2015). This final rule retains the compliance deadlines established in phase one for Category 1 rural low-stress pipelines. This rule subjects Category 2 rural low-stress pipelines to the same Part 195 requirements as those made applicable to Category 1 pipelines in phase one but with different compliance deadlines. Finally, this rule applies all requirements of Part 195 to Category 3 rural low-stress pipelines except for the IM requirements of § 195.452. Consistent with the phase one rule, pipeline segments will have to be identified within nine months of publication of this final rule, baseline IM assessments will have to be completed within five years of publication of the final rule, compliance with the requirements of subpart H of Part 195, Corrosion Control, will have to occur within three years and compliance with all other applicable requirements will have to occur with 12 months of publication of the final rule.

This final rule includes, as did the phase one rule, an option for operators to determine which pipeline segments are subject to IM requirements by performing analyses to determine whether pipeline segments could affect a USA in lieu of using the one-half-mile buffer.

This rule includes, as did the phase one rule, a provision addressing newly

identified USAs. Such new USAs could result in additional pipeline segments meeting criteria for Category 1 or 2 rural low-stress pipelines and thus become subject to IM requirements. This final rule requires that pipeline segments identified as Category 1 or 2 continue to meet the requirements applicable to those Categories even if the boundaries of a USA are redefined so that the pipeline segment (or portion thereof) is no longer within one-half mile of the USA unless the operator determines that the segment could not affect the USA. This provision adds no additional burden because pipeline operators may simply continue to treat their pipelines as they would have without the redefinition of USA boundaries.

Section-by-Section Analysis

Section 195.1

Which pipelines are covered by this Part?

Section 195.1 has been revised numerous times over the years to include changes to the pipelines covered or excluded from the scope of Part 195. Section 195.1 was revised in the phase one rule to provide more clarity and to include the phase one rural low-stress pipelines within the scope of Part 195. This final rule revises Sections 195.1(a) and (b) to include the rural low-stress pipelines brought under Part 195 regulations in phase two. The changes to this section do not affect any of the other covered or excluded pipelines previously identified in § 195.1.

This final rule also corrects an inadvertent error to § 195.1 that was introduced by the changes made under the phase one rule. The error concerns the long-standing exception for low-stress pipelines subject to the regulations of the USCG. Under the phase one rule, § 195.1 was incorrectly revised to state that Part 195 does not apply to any pipeline subject to the safety regulations of the USCG. In this final rule, we are correcting § 195.1 to state again that Part 195 does not apply to any low-stress pipeline subject to the safety regulations of the USCG.

Section 195.12

What requirements apply to low-stress pipelines in rural areas?

This Section is being revised to clarify that all previously unregulated low-stress pipelines in rural areas are now covered under Part 195 regulation. This Section does not apply to rural low-stress pipelines that cross a waterway used for commercial navigation because they have been regulated under Part 195

before either of the rulemakings addressing rural low-stress pipelines.

This section has been revised to define three categories of rural low-stress pipelines (Section 195.12(b)):

- Category 1 lines are those that were regulated in phase one (i.e., rural low-stress pipelines with a diameter of 8⁵/₈ inches or more located in or within one-half mile of a USA).
- Category 2 pipelines are those rural low-stress pipelines of smaller diameter (less than 8⁵/₈ inches) located in or within one-half mile of a USA.
- Category 3 are all remaining rural low-stress pipelines except for those that cross navigable waterways (which are already regulated under § 195.1 and are not addressed in § 195.12).

Section 195.12(c) also sets forth the required deadlines for compliance with various portions of Part 195. The compliance deadlines established by the phase one final rule for Category 1 rural low-stress pipelines remain unchanged. Except for the compliance deadlines for the completion of baseline IM assessments, this final rule establishes deadlines for Category 2 and Category 3 rural low-stress pipelines in the same manner as was done for Category 1 pipelines. For example, operators of Category 1 rural low-stress pipelines were required to identify these pipelines within nine months of the effective date of the phase one final rule and this final rule requires the same nine-month time frame for an operator of a Category 2 or Category 3 rural low-stress pipeline. In phase one, PHMSA adopted a compliance deadline of three and one-half years for completing 50% of baseline IM assessments and seven years for completing all baseline assessments. PHMSA concluded that it was appropriate to reduce the compliance deadlines for these requirements for the pipelines covered by this final rule considering the amount of time that has transpired since the passage of the PIPES Act and the relatively small number of miles that would be subject to these requirements. Thus, this final rule requires that operators of Category 2 pipelines complete all baseline IM assessments within five years of the effective date of the final rule and that at least 50 percent of the assessments be completed within two and one-half years.

As discussed above, PHMSA did not change the provision allowing operators of some Category 1 rural low-stress pipelines to notify PHMSA if they conclude that implementing the IM assessment requirements would pose such an economic burden that they would abandon their pipelines. This provision continues to be limited to

Category 1 rural low-stress pipelines carrying crude oil from production facilities and where shutdown of the pipeline would cause loss of oil supply or a transition to truck transportation. PHMSA (with assistance from DOE, as appropriate) will review notifications and, if justified, may grant the operator a special permit to allow continued operation of the pipeline subject to alternative safety requirements.

PHMSA's reasoning for not extending the provision to Category 2 pipelines is based on the definition of "gathering line" in § 195.2. That Section defines any "pipeline 219.1 mm (8⁵/₈ inch) or less nominal outside diameter that transports petroleum from a production facility" as a gathering line. Gathering lines are not subject to the provisions of § 195.12. Instead, requirements applicable to regulated rural gathering lines are found in § 195.11, and do not include IM requirements. As a result, no rural low-stress pipeline of 8⁵/₈ inch or less nominal diameter that carries crude oil from a production facility is subject to IM requirements, and it is not necessary to provide an economic burden provision for these pipelines to ameliorate unintended impacts on production.

Section 195.48 Scope

This Section was added in the phase one final rule. There had not previously been a scope Section in Subpart B because all pipelines subject to Part 195 were subject to all the reporting requirements in Subpart B. This Section was added in phase one because the reporting requirements of Subpart B were made applicable to all rural low-stress pipelines, even those not subject to the safety requirements of the phase one rule. Operators of those rural low-stress pipelines not subject to the technical requirements of Part 195 under phase one were not required to complete those portions of the annual report form that relate to IM requirements and inspections.

With this final rule, all rural low-stress pipelines are now subject to all requirements of Part 195, except that Category 3 pipelines are not subject to the IM requirements in § 195.452. The exclusion of portions of the annual report form related to IM has therefore been modified to apply only to operators of Category 3 pipelines.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures

PHMSA considers this final rule a non-significant regulatory action under Section 3(f) of Executive Order 12866

(58 FR 51735; Oct. 4, 1993). The rule is also non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). PHMSA prepared a Regulatory Evaluation, a copy of which has been placed in the docket.

This final rule affects those rural low-stress pipelines of any diameter that are more than one-half mile outside a USA and rural low-stress pipelines less than 8⁵/₈ inches in diameter that are located in or within one-half mile of a USA. The following table presents the estimates for the mileage affected by this rulemaking:

- Phase Two Eligible Mileage

Pipeline diameter	Miles inside USA	Miles outside USA
< 8 ⁵ / ₈ "	100.5	443.2
≥ 8 ⁵ / ₈ "	NA	840.6

Four sources of mileage data that provide varying levels of detail were analyzed to derive these final mileage estimates:

- The Regulatory Analysis for the low-stress phase 1 final rule by PHMSA published in August 2006.
- A survey of operators of low-stress pipelines.
- The annual mileage data pipeline operators report to PHMSA.
- Mileage estimates reported to the NPMS.

PHMSA concluded that the estimate of 5,624 miles of rural low-stress pipeline made in the phase one regulatory analysis was a high-end estimate. The results of the survey PHMSA conducted identified 1,575 miles and the NPMS reports 1,672.9 miles, with the NPMS data excluding both intra-plant miles and lines regulated in phase one. The PHMSA annual report database includes 1,536 newly-reported low-stress rural miles. Since the data collected in the survey includes a variety of other information used in this analysis, including characteristics of the reported mileage, it was used for phase two rural low-stress pipeline mileage estimates. Distribution percentages and assumptions relating to the three phase two rural low-stress pipeline segments result in a slightly lower estimate of total miles than the original estimate that resulted from the survey data. This final estimate is approximately 1,384 miles of eligible rural low-stress pipeline.

Costs of the Regulation

PHMSA estimates the 30-year net present values⁵ of compliance costs for this final rule to be \$104.9 million. The

operators of the pipelines affected by the regulatory changes included in the final rule are expected to incur costs attributable to those changes. The costs of the rulemaking will be those associated with bringing the affected pipelines into compliance with Part 195, which has the following eight Subparts:

- Subpart A—General
- Subpart B—Annual, Accident, and Safety-Related Condition Reporting
- Subpart C—Design Requirements
- Subpart D—Construction
- Subpart E—Pressure Testing
- Subpart F—Operation and Maintenance
- Subpart G—Qualification of Pipeline Personnel
- Subpart H—Corrosion Control

In addition, operators of the low-stress pipelines brought under Part 195 would also need to comply with 49 CFR part 199, the alcohol and drug testing requirements.

Benefits of the Regulation

The 30-year net present value of benefits of this final rule is \$326.5 million. PHMSA expects the regulatory changes to reduce the number of incidents and the incident costs and consequences. The ability of the final rule to reduce or avoid these costs is considered to be the primary benefit of the regulation and is referred to as traditional benefits. Data on incident costs for rural low-stress pipelines are generally not available because PHMSA has not regulated these pipelines in the past. Moreover, the reduction in costs that the regulation would cause is also unknown. The final 30-year net present values of benefits of this final rule are \$326.5 million.

This final rule also may produce benefits by preventing disruptions in the fuel supply caused by pipeline failures. Any interruption in the fuel supply impacts the U.S. economy by putting upward pressure on the prices paid by businesses and consumers, as incidents on Alaskan low-stress pipelines feeding major petroleum trunk lines have illustrated. Supply disruptions also have national security implications because they increase dependence on foreign sources of oil.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended, requires Federal agencies to conduct a separate analysis of the economic impact of rules on small entities. The Regulatory Flexibility Act requires that Federal agencies take small entities' concerns into account when developing, writing,

publicizing, promulgating, and enforcing regulations.

Need for Final Rule

This final rule covers certain rural onshore low-stress hazardous liquid pipelines. Beginning in 1991, Congress paid greater attention to the risks that hazardous liquid and natural gas pipelines pose to the environment. In the Pipeline Safety Act of 1992 (Pub. L. 102–508), Congress gave DOT greater authority to protect the environment from risks posed by pipelines. Congress continued to emphasize the need to better protect the environment from the risks pipelines pose in the Accountable Pipeline Safety and Partnership Act of 1996 (Pub. L. 104–304). With the PIPES Act of 2006 (Pub. L. 109–468), Congress went further and instructed DOT to apply all Part 195 requirements to unregulated rural low-stress pipelines.

PHMSA decided to apply Part 195 requirements to rural low-stress pipelines as a two-phase process. The phase one rulemaking covered large diameter pipe (greater than or equal to 8⁵/₈ inches in diameter) located in or within one-half mile of a USA. These were the higher-risk rural low-stress pipelines. This final rule addresses the remaining unregulated rural low-stress pipelines.

Description of Actions

PHMSA is bringing the remaining rural onshore low-stress pipelines not regulated by phase one under the safety regulations of 49 CFR part 195. These lines include rural low-stress pipelines with a diameter of less than 8⁵/₈ inches that are within one-half mile of a USA and rural low-stress pipelines of any size diameter that are outside of the one-half mile USA buffer.

Related Federal Rules and Regulations

There are currently no related rules or regulations issued by other departments or agencies of the Federal Government.

Identification of Potentially Affected Small Entities

In accordance with size standards published by the Small Business Administration, a pipeline transportation business with 1,500 or fewer employees is considered a small entity.⁶ Depending on the products being transported, low-stress pipeline operators belong to the North American Industry Classification System Code (NAICS) 486110, Pipeline Transportation of Crude Oil, or NAICS 486910, Pipeline Transportation of Refined Petroleum Products. For both NAICS codes, a business with 1,500 or

fewer employees is considered a small entity.

PHMSA made an extensive effort to identify small and other operators of rural low-stress lines. PHMSA surveyed these operators to get better information about the number of miles and compliance costs of rural hazardous liquid low-stress pipelines.

To ensure that the response rate was maximized, PHMSA publicized its plans to conduct the survey in (1) a 60-day **Federal Register** (FR) notice published on September 6, 2006, (71 FR 52504) and (2) a 30-day FR notice published on September 7, 2007, (72 FR 51489). No comments were submitted to either notice. PHMSA then announced the availability of the survey in a FR notice published on July 31, 2008, (73 FR 44800).

PHMSA delivered the survey and a letter explaining the importance of the study via three methods:

1. A version of the survey that allowed operators to directly input responses was posted on the PHMSA

OPS Online Data Entry Web site (ODES). An e-mail announcing the survey was sent to the contact person responsible for each company's most recent annual report submission.

2. Respondents were also able to print an electronic version of the survey directly from the e-mail received and mail or fax a completed hard copy to the Volpe National Transportation Systems Center (Volpe Center).

3. Finally, in an effort to reach companies that currently operate unregulated pipelines exclusively, PHMSA and the Volpe Center worked with the American Petroleum Institute, the Association of Oil Pipelines and the Independent Petroleum Association of America to announce and distribute the survey to their members via their email newsletters.

Of the 112 operators that responded, 20 reported rural low-stress pipeline mileage. PHMSA then conducted additional follow-up discussions with these operators. Only 12 of the 20 operators were identified as actually

having rural low-stress pipeline mileage that would be addressed by the phase two rulemaking. Two of the 12 relevant operators are owned by the same parent company. Therefore, there are 11 businesses that may be potentially affected by this rule.

In order to assess the potential business compliance impact, information on the size of the ultimate parent companies for the potentially affected pipeline operators was collected from a compilation of Dun & Bradstreet data, online company profiles, and direct phone calls. This use of data for the ultimate parent enterprise is consistent with the Regulatory Flexibility Act which directs Federal agencies to use the U.S. Small Business Administration's (SBA) definition of a small business. The SBA's definition of a small business considers a firm's parent company and all affiliates to be a single entity. The enterprise name, number of employees, revenues, profits, compliance costs and affected mileage are listed in the following table.

Ultimate Parent Company Profiles for Low-Stress Pipeline Operators

Operator Enterprise	Number of Employees	Revenue (millions)	Profits (millions)	Affected Mileage	Compliance Costs			Data Source
					Initial	Every one year	Recurring Every five year	
ExxonMobil US Production	107,000	\$ 372,824	\$ 40,610	2.7	\$ 179,000	\$ 2,000	\$ -	CNN Financial Profile, http://money.cnn.com/magazines/fortune/global500/2008/snapshots/387.html
ConocoPhillips	32,600	\$ 178,558	\$ 11,891	56.8	\$ 15,000	\$ 3,000	\$ -	CNN Financial Profile, http://money.cnn.com/magazines/fortune/global500/2008/snapshots/327.html
Holly Energy Partners	1,381	\$ 5,867	N/A	30.3	\$ -	\$ -	\$ -	LinkedIn, http://www.linkedin.com/companies/holly-corporation
BP	97,600	\$ 291,438	\$ 20,845	2.8	\$ -	\$ -	\$ -	CNN Financial Profile, http://money.cnn.com/magazines/fortune/global500/2008/snapshots/6327.html
Marathon Pipe Line LLC	30,360	\$ 77,193	\$ 3,528	82.9	\$ 645,000	\$ -	\$ 268,000	Marathon Fact Book (2008), http://www.marathon.com/content/documents/investor_center/fact_books/2008_factbook_final.pdf
Sunoco Pipeline LP	14,200	\$ 42,101	\$ 891	45.0	\$ 500,000	\$ -	\$ 500,000	CNN Financial Profile, http://money.cnn.com/magazines/fortune/global500/2008/snapshots/396.html
Plains All American Pipeline, L.P.	2,000	\$ 31,177	\$ 217	178.7	\$ 13,632,100	\$ 564,500	\$ 5,691,200	CNN Financial Profile, http://money.cnn.com/magazines/fortune/global500/2008/snapshots/11014.html
McCain Pipeline Company	2	N/A	N/A	4.0	\$ 475,000	\$ -	\$ 100,000	Operator Phone Call
MarkWest Energy Partners	471	\$ 1,338	N/A	100.0	\$ -	\$ -	\$ -	Dun&Bradstreet
Westlake Petrochemicals	2,955	\$ 2,290	\$ 69	6.3	\$ 121,500	\$ -	\$ 100,000	Yahoo Financial Profile, http://finance.yahoo.com/q/pr?s=WLK
Chevron Pipe Line Company	65,035	\$ 210,783	\$ 18,688	37.0	\$ -	\$ -	\$ -	CNN Financial Profile, http://money.cnn.com/magazines/fortune/global500/2008/snapshots/385.html

The table above shows that three of the 11 enterprises employ less than

1,500 persons and are thus considered small entities. The cost estimation

analysis, described in the Regulatory Analysis, concluded that the rural low-

stress mileage held by two of these operators is already in compliance with Part 195. Therefore, these two small entities will not be adversely affected by the rulemaking. The other small entity, which has four miles of affected rural low-stress mileage, reports an initial compliance cost of \$475,000 and recurring costs of \$100,000 every five years.

Alternate Proposals for Small Businesses

The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so, and still meet the objectives of applicable regulatory statutes.

The phase two Regulatory Analysis analyzes six regulatory alternatives. They are as follows:

Alternative 1: Apply all Part 195 requirements to all eligible rural low-stress pipelines.

Alternative 2: Apply all Part 195 requirements to small diameter rural low-stress pipelines located in or within one-half mile of a USA.

Alternative 3: Apply all Part 195 requirements to rural low-stress pipelines equal to or greater than 8 $\frac{5}{8}$ inches in diameter located farther than one-half mile from a USA.

Alternative 4: Apply all Part 195 requirements to rural low-stress pipelines less than 8 $\frac{5}{8}$ inches in diameter outside one-half mile of a USA.

Alternative 5: Apply all Part 195 requirements except Subpart H (Corrosion Control) to all rural low-stress pipelines not currently regulated.

Alternative 6: Apply all Part 195 requirements except the IM Program to all rural low-stress pipelines not currently regulated.

Alternative 1 is the alternative that PHMSA has selected. This alternative not only complies with the statutory requirement but also increases the level of safety and environmental protection associated with the transportation of hazardous liquids through low-stress pipelines to a level commensurate with other pipelines that are already subject to the pipeline safety regulations.

Conclusion

From the information we have gathered, this final rule will have an economic impact on one known small entity. Therefore, under Section 605 of the Regulatory Flexibility Act, this final rule will not have a significant impact on a substantial number of small entities.

Executive Order 13175

PHMSA has analyzed this final rule according to the principles and criteria in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Because this final rule would not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Paperwork Reduction Act

Pursuant to 5 CFR 1320.8(d), PHMSA used the NPRM to provide interested members of the public and affected agencies with an opportunity to comment on information collection and recordkeeping requests. PHMSA identified four information collections that would bear some impact as a result of this rulemaking. No comments were received. Upon review of the burden impacts on the identified information collection requests, PHMSA believes that the minimal impact to these information collections do not warrant revisions to the currently approved information collections.

The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) type of request; (4) abstract of the information collection activity; (5) description of affected public; (6) estimate of total annual reporting and recordkeeping burden; and (7) frequency of collection. PHMSA estimates that based on the requirements in this rule, the current information collection burden for the following information collections will remain as follows:

Title of information Collection: Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Accident Reporting.

OMB Control Number: 2137-0047.

Type of Request: Revision of a currently approved information collection.

Abstract: Hazardous liquid pipeline operators must keep records to ensure that their pipelines are operated safely. Operators must also report accidents.

Type of Respondents: Hazardous Liquid Operators.

Total Annual Responses: 847.

Total Annual Burden Hours: 51,329 hours.

Frequency of Collection: On occasion.

Title of information Collection: National Pipeline Mapping Program.

OMB Control Number: 2137-0596.

Type of Request: Revision of a currently approved information collection.

Abstract: The operator of a pipeline facility (except distribution lines and gathering lines) provides information to PHMSA on the characteristics of its pipeline system. The submitted information includes updates to annual mapping information for each mile of pipeline.

Type of Respondents: Pipeline Facility Operators (except distribution lines and gathering lines).

Total Annual Responses: 894.

Total Annual Burden Hours: 16,312 hours.

Frequency of Collection: Annual.

Title of information Collection:

Pipeline Integrity Management in High Consequence Areas (Operators with less than 500 Miles of Hazardous Liquid Pipelines).

OMB Control Number: 2137-0605.

Type of Request: Revision of a currently approved information collection.

Abstract: Hazardous Liquid Operators with less than 500 miles of Pipelines are required to continually assess and evaluate the integrity of their pipeline through inspection or testing. Such operators must also implement remedial, preventive, and mitigative actions on these pipelines.

Type of Respondents: Hazardous Liquid Operators (with less than 500 miles of pipelines).

Total Annual Responses: 132.

Total Annual Burden Hours: 267,960 hours.

Frequency of Collection: On occasion.

Title of information Collection: Public Awareness Program.

OMB Control Number: 2137-0622.

Type of Request: Revision of a currently approved information collection.

Abstract: Current regulations require pipeline operators to develop and implement public awareness programs. Public awareness and understanding of pipeline operations is vital to the continued safe operation of pipelines. Upon request, operators must submit their completed programs to PHMSA or, in the case of an intrastate pipeline facility operator, the appropriate state agency.

Type of Respondents: Pipeline Operators.

Total Annual Responses: 22,500.

Total Annual Burden Hours: 517,480 hours.

Frequency of Collection: On occasion.

Any questions regarding these information collections should be directed to Cameron Satterthwaite, Office of Pipeline Safety (PHP-30), Pipeline and Hazardous Materials Safety Administration (PHMSA), 2nd Floor,

1200 New Jersey Avenue, SE.,
Washington, DC 20590-0001, SW.,
Washington, DC 20590-0001,
Telephone 202-366-8553.

Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141.3 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 regulatory action.

National Environmental Policy Act

The National Environmental Policy Act requires Federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. PHMSA conducted an environmental assessment of the application of phase two safety regulations to rural onshore hazardous liquid pipelines. This environmental assessment examined the environmental impacts of the requirements proposed in the NPRM, and reasonable alternatives to those actions, on the environment.

The environmental assessment found that the NPRM requirements would not significantly affect the quality of the environment. Only limited physical modification or other work that would disturb pipelines would be required, such as identifying segments of pipelines meeting the regulatory definitions, inspection and testing, installing and maintaining line markers, implementing corrosion controls, pipeline cleaning, and establishing integrity assessment programs. The environmental assessment preliminarily concluded the expected reductions in hazardous liquid spills are a minor to moderate positive environmental impact offsetting the negligible negative environmental impacts associated with implementing the rulemaking. The full final environmental assessment is available for review in the public docket. We did not receive any comment on the assessment or preliminary conclusion. Therefore, we conclude that this rulemaking will not result in any significant negative or positive environmental impacts affecting the quality of the human environment.

Executive Order 13132

PHMSA has analyzed this final rule according to the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule would

not (1) have substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government; (2) impose substantial direct compliance costs on state and local governments; or (3) preempt state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13211

This final rule is not a "significant energy action" under Executive Order 13211. It is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Furthermore, this final rule has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

List of Subjects in 49 CFR Part 195

Regulated rural gathering, Rural low-stress pipelines.

For the reasons provided in the preamble, PHMSA amends 49 CFR Part 195 as follows:

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

■ 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 revised to read as follows:

§ 195.1 Which pipelines are covered by this Part?

(a) *Covered.* Except for the pipelines listed in paragraph (b) of this Section, this Part applies to pipeline facilities and the transportation of hazardous liquids or carbon dioxide associated with those facilities in or affecting interstate or foreign commerce, including pipeline facilities on the Outer Continental Shelf (OCS). Covered pipelines include, but are not limited to:

- (1) Any pipeline that transports a highly volatile liquid;
- (2) Any pipeline segment that crosses a waterway currently used for commercial navigation;
- (3) Except for a gathering line not covered by paragraph (a)(4) of this Section, any pipeline located in a rural or non-rural area of any diameter regardless of operating pressure;
- (4) Any of the following onshore gathering lines used for transportation of petroleum:
 - (i) A pipeline located in a non-rural area;
 - (ii) A regulated rural gathering line as provided in § 195.11; or

(iii) A pipeline located in an inlet of the Gulf of Mexico as provided in § 195.413.

(b) *Excepted.* This Part does not apply to any of the following:

- (1) Transportation of a hazardous liquid transported in a gaseous state;
- (2) Transportation of a hazardous liquid through a pipeline by gravity;
- (3) Transportation of a hazardous liquid through any of the following low-stress pipelines:

(i) A pipeline subject to safety regulations of the U.S. Coast Guard; or

(ii) A pipeline that serves refining, manufacturing, or truck, rail, or vessel terminal facilities, if the pipeline is less than one mile long (measured outside facility grounds) and does not cross an offshore area or a waterway currently used for commercial navigation;

(4) Transportation of petroleum through an onshore rural gathering line that does not meet the definition of a "regulated rural gathering line" as provided in § 195.11. This exception does not apply to gathering lines in the inlets of the Gulf of Mexico subject to § 195.413;

(5) Transportation of hazardous liquid or carbon dioxide in an offshore pipeline in state waters where the pipeline is located upstream from the outlet flange of the following farthest downstream facility: The facility where hydrocarbons or carbon dioxide are produced or the facility where produced hydrocarbons or carbon dioxide are first separated, dehydrated, or otherwise processed;

(6) Transportation of hazardous liquid or carbon dioxide in a pipeline on the OCS where the pipeline is located upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator;

(7) A pipeline segment upstream (generally seaward) of the last valve on the last production facility on the OCS where a pipeline on the OCS is producer-operated and crosses into state waters without first connecting to a transporting operator's facility on the OCS. Safety equipment protecting PHMSA-regulated pipeline segments is not excluded. A producing operator of a segment falling within this exception may petition the Administrator, under § 190.9 of this chapter, for approval to operate under PHMSA regulations governing pipeline design, construction, operation, and maintenance;

(8) Transportation of hazardous liquid or carbon dioxide through onshore production (including flow lines), refining, or manufacturing facilities or storage or in-plant piping systems associated with such facilities;

(9) Transportation of hazardous liquid or carbon dioxide:

(i) By vessel, aircraft, tank truck, tank car, or other non-pipeline mode of transportation; or

(ii) Through facilities located on the grounds of a materials transportation terminal if the facilities are used exclusively to transfer hazardous liquid or carbon dioxide between non-pipeline modes of transportation or between a non-pipeline mode and a pipeline. These facilities do not include any device and associated piping that are necessary to control pressure in the pipeline under § 195.406(b); or

(10) Transportation of carbon dioxide downstream from the applicable following point:

(i) The inlet of a compressor used in the injection of carbon dioxide for oil recovery operations, or the point where recycled carbon dioxide enters the injection system, whichever is farther upstream; or

(ii) The connection of the first branch pipeline in the production field where the pipeline transports carbon dioxide to an injection well or to a header or manifold from which a pipeline branches to an injection well.

(c) *Breakout tanks.* Breakout tanks subject to this Part must comply with requirements that apply specifically to breakout tanks and, to the extent applicable, with requirements that apply to pipeline systems and pipeline facilities. If a conflict exists between a requirement that applies specifically to breakout tanks and a requirement that applies to pipeline systems or pipeline facilities, the requirement that applies specifically to breakout tanks prevails. Anhydrous ammonia breakout tanks need not comply with §§ 195.132(b), 195.205(b), 195.242(c) and (d), 195.264(b) and (e), 195.307, 195.428(c) and (d), and 195.432(b) and (c).

■ 3. Section 195.12 is revised to read as follows:

§ 195.12 What requirements apply to low-stress pipelines in rural areas?

(a) *General.* This Section sets forth the requirements for each category of low-stress pipeline in a rural area set forth in paragraph (b) of this Section. This Section does not apply to a rural low-stress pipeline regulated under this Part as a low-stress pipeline that crosses a waterway currently used for commercial navigation; these pipelines are regulated pursuant to § 195.1(a)(2).

(b) *Categories.* An operator of a rural low-stress pipeline must meet the applicable requirements and compliance deadlines for the category of pipeline set forth in paragraph (c) of this

Section. For purposes of this Section, a rural low-stress pipeline is a Category 1, 2, or 3 pipeline based on the following criteria:

(1) A Category 1 rural low-stress pipeline:

(i) Has a nominal diameter of 8⁵/₈ inches (219.1 mm) or more;

(ii) Is located in or within one-half mile (.80 km) of an unusually sensitive area (USA) as defined in § 195.6; and

(iii) Operates at a maximum pressure established under § 195.406 corresponding to:

(A) A stress level equal to or less than 20-percent of the specified minimum yield strength of the line pipe; or

(B) If the stress level is unknown or the pipeline is not constructed with steel pipe, a pressure equal to or less than 125 psi (861 kPa) gage.

(2) A Category 2 rural pipeline:

(i) Has a nominal diameter of less than 8⁵/₈ inches (219.1mm);

(ii) Is located in or within one-half mile (.80 km) of an unusually sensitive area (USA) as defined in § 195.6; and

(iii) Operates at a maximum pressure established under § 195.406 corresponding to:

(A) A stress level equal to or less than 20-percent of the specified minimum yield strength of the line pipe; or

(B) If the stress level is unknown or the pipeline is not constructed with steel pipe, a pressure equal to or less than 125 psi (861 kPa) gage.

(3) A Category 3 rural low-stress pipeline:

(i) Has a nominal diameter of any size and is not located in or within one-half mile (.80 km) of an unusually sensitive area (USA) as defined in § 195.6; and

(ii) Operates at a maximum pressure established under § 195.406 corresponding to a stress level equal to or less than 20-percent of the specified minimum yield strength of the line pipe; or

(iii) If the stress level is unknown or the pipeline is not constructed with steel pipe, a pressure equal to or less than 125 psi (861 kPa) gage.

(c) *Applicable requirements and deadlines for compliance.* An operator must comply with the following compliance dates depending on the category of pipeline determined by the criteria in paragraph (b):

(1) An operator of a Category 1 pipeline must:

(i) Identify all segments of pipeline meeting the criteria in paragraph (b)(1) of this Section before April 3, 2009.

(ii) Beginning no later than January 3, 2009, comply with the reporting requirements of Subpart B for the identified segments.

(iii) IM requirements—

(A) Establish a written program that complies with § 195.452 before July 3, 2009, to assure the integrity of the pipeline segments. Continue to carry out such program in compliance with § 195.452.

(B) An operator may conduct a determination per § 195.452(a) in lieu of the one-half mile buffer.

(C) Complete the baseline assessment of all segments in accordance with § 195.452(c) before July 3, 2015, and complete at least 50-percent of the assessments, beginning with the highest risk pipe, before January 3, 2012.

(iv) Comply with all other safety requirements of this Part, except Subpart H, before July 3, 2009. Comply with the requirements of Subpart H before July 3, 2011.

(2) An operator of a Category 2 pipeline must:

(i) Identify all segments of pipeline meeting the criteria in paragraph (b)(2) of this Section before July 1, 2012.

(ii) Beginning no later than January 3, 2009, comply with the reporting requirements of Subpart B for the identified segments.

(iii) IM—

(A) Establish a written IM program that complies with § 195.452 before October 1, 2012 to assure the integrity of the pipeline segments. Continue to carry out such program in compliance with § 195.452.

(B) An operator may conduct a determination per § 195.452(a) in lieu of the one-half mile buffer.

(C) Complete the baseline assessment of all segments in accordance with § 195.452(c) before October 1, 2016 and complete at least 50-percent of the assessments, beginning with the highest risk pipe, before April 1, 2014.

(iv) Comply with all other safety requirements of this Part, except Subpart H, before October 1, 2012. Comply with Subpart H of this Part before October 1, 2014.

(3) An operator of a Category 3 pipeline must:

(i) Identify all segments of pipeline meeting the criteria in paragraph (b)(3) of this Section before July 1, 2011.

(ii) Beginning no later than January 3, 2009, comply with the reporting requirements of Subpart B for the identified segments.

(A)(iii) Comply with all safety requirements of this Part, except the requirements in § 195.452, Subpart B, and the requirements in Subpart H, before October 1, 2012. Comply with Subpart H of this Part before October 1, 2014.

(d) *Economic compliance burden.*

(1) An operator may notify PHMSA in accordance with § 195.452(m) of a situation meeting the following criteria:

(i) The pipeline is a Category 1 rural low-stress pipeline;

(ii) The pipeline carries crude oil from a production facility;

(iii) The pipeline, when in operation, operates at a flow rate less than or equal to 14,000 barrels per day; and

(iv) The operator determines it would abandon or shut-down the pipeline as a result of the economic burden to comply with the assessment requirements in § 195.452(d) or 195.452(j).

(2) A notification submitted under this provision must include, at minimum, the following information about the pipeline: its operating, maintenance and leak history; the estimated cost to comply with the integrity assessment requirements (with a brief description of the basis for the estimate); the estimated amount of production from affected wells per year, whether wells will be shut in or alternate transportation used, and if alternate transportation will be used, the estimated cost to do so.

(3) When an operator notifies PHMSA in accordance with paragraph (d)(1) of this Section, PHMSA will stay compliance with §§ 195.452(d) and 195.452(j)(3) until it has completed an analysis of the notification. PHMSA will consult the Department of Energy, as appropriate, to help analyze the potential energy impact of loss of the pipeline. Based on the analysis, PHMSA may grant the operator a special permit to allow continued operation of the pipeline subject to alternative safety requirements.

(e) *Changes in unusually sensitive areas.*

(1) If, after June 3, 2008, for Category 1 rural low-stress pipelines or October 1, 2011 for Category 2 rural low-stress pipelines, an operator identifies a new USA that causes a segment of pipeline to meet the criteria in paragraph (b) of this Section as a Category 1 or Category 2 rural low-stress pipeline, the operator must:

(i) Comply with the IM program requirement in paragraph (c)(1)(iii)(A) or (c)(2)(iii)(A) of this Section, as appropriate, within 12 months following the date the area is identified regardless of the prior categorization of the pipeline; and

(ii) Complete the baseline assessment required by paragraph (c)(1)(iii)(C) or (c)(2)(iii)(C) of this Section, as appropriate, according to the schedule in § 195.452(d)(3).

(2) If a change to the boundaries of a USA causes a Category 1 or Category 2 pipeline segment to no longer be within one-half mile of a USA, an operator must continue to comply with paragraph (c)(1)(iii) or paragraph

(c)(2)(iii) of this section, as applicable, with respect to that segment unless the operator determines that a release from the pipeline could not affect the USA.

(f) *Record Retention.* An operator must maintain records demonstrating compliance with each requirement applicable to the category of pipeline according to the following schedule.

(1) An operator must maintain the segment identification records required in paragraph (c)(1)(i), (c)(2)(i) or (c)(3)(i) of this Section for the life of the pipe.

(2) Except for the segment identification records, an operator must maintain the records necessary to demonstrate compliance with each applicable requirement set forth in paragraph (c) of this Section according to the record retention requirements of the referenced Section or Subpart.

■ 4. Section 195.48 is revised to read as follows:

§ 195.48 Scope.

This Subpart prescribes requirements for periodic reporting and for reporting of accidents and safety-related conditions. This Subpart applies to all pipelines subject to this Part. An operator of a Category 3 rural low-stress pipeline meeting the criteria in § 195.12 is not required to complete those parts of the hazardous liquid annual report form PHMSA F 7000-1.1 associated with IM or high consequence areas.

Issued in Washington, DC, on April 28, 2011.

Cynthia L. Quarterman,
Administrator.

[FR Doc. 2011-10778 Filed 5-4-11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket ID. FMCSA-2010-0032]

RIN 2126-AB36

Hours of Service Exception for Railroad Signal Employees

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) amends its hours-of-service (HOS) regulations to adopt regulatory language consistent with the statutory exemption for certain railroad signal employees operating commercial motor vehicles (CMVs) in connection with railroad signal work.

This is in accordance with the Rail Safety Improvement Act of 2008 (RSIA of 2008), which took effect July 16, 2009. This action will ensure that Federal, State and local motor carrier enforcement officials are aware of the statutory exemption applicable to signal employees and eliminate the potential for issuance of improper citations.

DATES: This action is effective on May 5, 2011.

Docket: For access to the docket to read background documents identified by docket number FMCSA-2010-0032 or RIN 2126-AB36 go to *Federal eRulemaking Portal: http://www.regulations.gov* at any time, or visit the U.S. Department of Transportation's Docket Management Facility at West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366-4325.

SUPPLEMENTARY INFORMATION:

I. Background/Overview

This exception to FMCSA's hours-of-service (HOS) regulations is mandated by the RSIA of 2008. This law provides that "signal employees" who operate motor vehicles and who are regulated under 49 U.S.C. 21101, *et seq.*, are not subject to HOS rules promulgated by any other Federal authority, including FMCSA. *See* 49 U.S.C. 21104(e). Thus, FMCSA amends its regulations to state that FMCSA's HOS regulations do not apply to a signal employee who is regulated under 49 U.S.C. 21101-21109. This amendment will clarify the current exception applicable to signal employees for industry and for Federal, State and local law enforcement and eliminate the potential for issuance of improper citations.

FMCSA is also amending the authority citation for 49 CFR part 395 to add appropriate statutory references and eliminate references that are either erroneous or unnecessary.

II. Legal Basis for the Rulemaking

This final rule is based on FMCSA's authority to implement statutory directives enacted by several provisions of the RSIA of 2008, Public Law 110-432, 122 Stat. 4848, 49 U.S.C. 21101, *et seq.* Section 108 of the RSIA of 2008 substantively amends the law applicable to employees engaged in signal work for